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Sup Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 21

BACARDI CORPORATION OF AMERICA,
PETITIONER,

vs.

Manuel V. Domenech
~~RAFAEL SANCHO BONET, TREASURER, AND~~
DESTILERIA SERRALLES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 29, 1940.

CERTIORARI GRANTED APRIL 22, 1940.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3455.

RAFAEL SANCHO BONET, Treasurer,
DEFENDANT, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

No. 3456.

DESTILERIA SERRALLES, Inc.,
INTERVENOR, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF PUERTO RICO,
FROM FINAL DECREE (COOPER, J.), JUNE 30, 1938.

TRANSCRIPT OF RECORD.

WILLIAM CATTRON RIGBY,
for Defendant, Appellant.

JAIME SIFRE, JR.,
for Intervenor, Appellant.

EDWARD S. ROGERS,
JEROME L. ISAACS,
ROGERS, RAMSAY & HOGE,
THOMAS HUNT,
GASTON, SNOW, HUNT, RICE & BOYD,
for Appellee.

BOSTON:

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1939

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3455.

RAFAEL SANCHO BONET, TREASURER,
DEFENDANT, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

No. 3456.

DESTILERIA SERRALLES, INC.,
INTERVENOR, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

TRANSCRIPT OF RECORD OF DISTRICT COURT.

[FILED IN CIRCUIT COURT OF APPEALS APRIL 21, 1939.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF PUERTO RICO.

IN EQUITY NO. 2238.

BACARDI CORPORATION OF AMERICA, PLAINTIFF,

v.

RAFAEL SANCHO BONET, TREASURER OF PUERTO RICO,
DEFENDANT.

BILL OF COMPLAINT.

[Filed July 31, 1937.]

To the Honorable, the Judge of the District Court of the United States for the District of Puerto Rico.

Plaintiff, Bacardi Corporation of America, is a corporation duly organized and existing under and by virtue of the laws of the

State of Pennsylvania and is a citizen of the State of Pennsylvania. Defendant, Rafael Sancho Bonet, is the Treasurer of Puerto Rico and is a citizen of the United States of America and of Puerto Rico, resident and domiciled in Puerto Rico, and is charged under the laws of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico.

The jurisdiction of this court is invoked upon the following grounds:

This is a suit arising under the Constitution of the United States; under the Organic Act of Puerto Rico approved March 2, 1917, being an act of Congress of the United States entitled "An Act to Provide a Civil Government of Puerto Rico and for other purposes", and under the Act of Congress of the United States approved August 29, 1935, known as the "Federal Alcohol Administration Act", as amended. This suit also arises under the trademark laws of the United States and under the Trade-mark Convention and Protocol for Trade-mark and Commercial Protection in effect between the United States and the Republic of Cuba. This is also a case of a civil nature between a citizen of the State of Pennsylvania and a citizen of Puerto Rico wherein the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.

For its cause of action plaintiff states:

(1) In 1862 Facundo Bacardi established a distillery at Santiago

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de Cuba. He was succeeded by his three sons who formed a co-partnership under the name "Bacardi y Cia." In 1919 the business was incorporated under the laws of the Republic of Cuba as Compania Ron Bacardi, S. A., which corporation now conducts the said business of the production of alcoholic liquors, particularly rum, sold under registered trade-marks including the word "Bacardi", "Bacardi y Cia.", the representation of a bat in a circular frame, and certain distinctive labels.

(2) Sometime prior to 1915 an agency was established in New

York through which, before National prohibition, the Cuban company sold large quantities of Bacardi rum in the United States and expended large sums of money in advertising. Until National prohibition Bacardi rum was also sold in Puerto Rico. National prohibition deprived the Cuban company of its American market but it continued to produce and sell Bacardi rum in Cuba and elsewhere throughout the world under the trade-marks aforesaid, and after the repeal of prohibition, sales of Bacardi rum were resumed in the United States and Puerto Rico and have since continued.

(3) Bacardi rum is and always has been made according to definite processes and methods which are trade secrets. It is a product of high and recognized quality and enjoys an excellent reputation. The producers of Bacardi rum possess a valuable good will and property right in the name Bacardi and in the trade-marks and distinctive labels under which Bacardi rum has always been sold.

(4) The Cuban company after due and proper proceedings caused various of its trade-marks to be registered in the United States Patent Office, among them the following:

- No. 302916, May 2, 1933, Bat Trade-mark.
- No. 310654, March 6, 1934, Bacardi.
- No. 327649, September 3, 1935, Bacardi y Cia.
- No. 331459, January 7, 1936, Bacardi Labels and Medals.
- No. 331460, January 7, 1936, Bacardi Labels and Medals.
- No. 337254, August 4, 1936, Carta de Oro, Bacardi y Cia.
- No. 338241, September 1, 1936, Carta Blanca, Bacardi y Cia.

These registrations are based upon corresponding Cuban registrations and are authorized by the Convention in effect between the United States and Cuba and by United States Statutes (U. S. Stat. at Large 46, Part 2, page 2907 and following; Act of Congress of February 20, 1905, U. S. C. Tit. 15 Sections 81 and 84).

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thereof are attached hereto as Plaintiff's Exhibit Bacardi Registrations.

The Bacardi trade-marks were also duly registered according to law in the Office of the Executive Secretary of Puerto Rico, as follows:

No. 3916—Bacardi.

No. 3917—Bat Trade-mark.

No. 3918—Ron Bacardi, Superior Carta de Oro.

No. 3919—Ron Bacardi, Superior Carta Blanca.

All these registrations were made on April 10, 1935.

(5) On April 24, 1934 the Bacardi Corporation of America, plaintiff herein, was organized as a corporation under the laws of the State of Pennsylvania, for the following purposes:

The manufacture, production, distillation, redistillation, development, rectification, blending, mixing, purifying, recovering, flavoring, denaturization of alcohol or alcoholic liquid for beverage, industrial and other purposes; to buy, sell, trade and deal in, either at wholesale or at retail, export, import, hold, use, distribute, store and warehouse alcohol and alcoholic liquors for beverage, industrial, and other purposes, either as principal, agent, or factor.

The principal office and place of business of said corporation was established at 946 North Delaware Avenue, Philadelphia, Pennsylvania, and a Federal Rectifier's Permit was issued to the plaintiff on November 23, 1935, Permit No. R-542. Plaintiff also held Permit No. 538, Serial A-52 of the State of Pennsylvania. Plaintiff established itself in Pennsylvania because it had entered into certain arrangements with Pennsylvania Alcohol Corporation, a corporation having its principal place of business in Philadelphia, Pennsylvania, concerning the manufacture of distilled spirits. Plaintiff's relations with the Pennsylvania Alcohol Corporation proved unsatisfactory and plaintiff therefore decided to remove from Pennsylvania to Puerto Rico and in accordance with Federal Regulations, plaintiff voluntarily surrendered its Pennsylvania permit and its Federal permit was amended on March 28, 1936 by

the Federal Alcohol Administration to enable plaintiff to operate in Puerto Rico.

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(6) The plaintiff prior to February 1, 1936, viz.: on June 8, 1934, acquired from the Compania Ron Bacardi, S. A., for good and valuable consideration, the right to use the registered trademarks of the Cuban company, including those hereinabove referred to, as provided by Article 11 of the Convention between the United States and the Republic of Cuba (U. S. Stat. at Large, Volume 46, page 2924) and Article 5 of the Protocol to said Convention; and the plaintiff also obtained from the Cuban company the disclosure of the secret processes and methods of producing Bacardi rum, and the plaintiff has brought to Puerto Rico technicians who have instructed plaintiff in the use of said secret processes and methods, and who actually supervise plaintiff's manufacture in Puerto Rico of rum of the same high quality and character as the product heretofore sold in the United States including Puerto Rico under the trade-marks heretofore set forth.

The label proposed to be used by plaintiff in Puerto Rico has been approved by the Federal Alcohol Administration under the Federal Alcohol Administration Act of August 29, 1935, Chapter 814, paragraph 1, 49 U. S. Stat. 977. A copy of such approval is attached hereto and marked "Plaintiff's Exhibit Approval of Label".

(7) Plaintiff is duly licensed to do business in Puerto Rico, having received from the Executive Secretary of Puerto Rico on March 31, 1936, a certificate of registration as a foreign corporation, and having furthermore received on April 6, 1936 from the Treasurer of Puerto Rico a license to do business in Puerto Rico, which license has been renewed from year to year and is still in force, all fees provided by the law for that purpose having been paid by plaintiff. Plaintiff also received from the Treasurer of Puerto Rico on July 20, 1936, permits for distilling, rectifying and warehousing alcohol. On March 6, 1936, the plaintiff entered into an agreement for the rental (with option of purchase) of the

five-story building owned by the Porto Rican American Tobacco Company situated on Marina Street, San Juan, for a period of three years at a rental of \$9,600 a year and brought from Cuba and Pennsylvania the necessary equipment and materials. Plaintiff installed a rectifying plant in the said building in the city of

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San Juan, all at an expense approximately of \$600,000, of which about \$45,000 was expended between April 6, 1936 and May 15, 1936. Attached hereto are photographs of plaintiff's establishment in San Juan marked "Plaintiff's Exhibit Photographs of Plaintiff's Plant".

Plaintiff has produced and accumulated in Puerto Rico a large stock of properly matured rum which it is now ready to bottle, label and sell; is prepared to do so, and has made commitments to its customers to sell them such product under the name Bacardi, and the various trade-marks heretofore set forth but will be prevented therefrom solely for the reasons hereinafter alleged.

(8) Very shortly after the plaintiff started operations in Puerto Rico, the Legislature of Puerto Rico passed an Act, Law No. 115, known as "Alcoholic Beverage Law of Puerto Rico", approved May 15, 1936, and expiring September 30, 1936, the title of which Act reads as follows:

"AN ACT

To Provide Revenues for the People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 38, Approved July 30, 1935, Entitled 'An Act to Provide Revenues for the People of Puerto Rico by Levying Excise Taxes on Alcohol and Alcoholic Beverages, and Licenses for the Manufacture and Sale Thereof; to Regulate the Manufacture, Importation,

and Sale of Alcohol and Alcoholic Beverages; to Impose Penalties for Violations Hereof; to Repeal Act No. 1, Approved June 29, 1935; and for Other Purposes'; and for Other Purposes."

This Act contained the following provisions:

"Section 41.—The Treasurer of Puerto Rico shall not issue any license prescribed by this Act for any business establishment which is less than 25 meters from a public or private school.

B. After the thirty (30) days following the taking effect of this Act, no persons shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. The Treasurer shall prescribe the form of said permits and shall specify on each one the authority conferred thereby, as well as the conditions under which the permit is granted, according to the provisions of this Act. To the extent which the Treasurer may deem necessary for the efficient

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administration of this Act, separate applications and permits shall be required by the Treasurer as regards the various branches of the industry, including distilling, rectifying, bottling, and other activities connected with the manufacture of distilled spirits, and as regards the different classes of persons entitled to permits under this title. The permits hereby prescribed are separate and distinct from the licenses required by virtue of other sections of the Act.

C. The following persons shall be entitled to permits upon application:

(1) Every person who on February 1, 1936, possesses a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rec-

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tifying, and bottling, distilled spirits, and who is on that date engaged in said business.

(2) Any other person who may fully comply with the following requisites:

(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among other particulars, the following specific information:

(I) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and Insular Laws.

(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico.

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known

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by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.

(i) The production capacity of existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title.

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured, in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico.

The plaintiff duly complied with the foregoing provisions of the Act, and at no time during the life of the said Act No. 115 did the plaintiff bottle any rum whatsoever, or use any label contain-

ing any brand, trade name or trade-mark in contravention of the foregoing section and sub-section.

(9) The third Special Session of the 13th Legislature of Puerto Rico, passed an Act, No. 6, known as "Spirits and Alcoholic Beverages Act" which repealed and superseded Act No. 115, approved June 30, 1936, to remain in force until September 30, 1937, the title of which act reads as follows:

"AN ACT

To Provide Revenue for the People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 115, Approved May 15, 1936; and for Other Purposes."

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This Act (No. 6) provides, in Section 44, the following:

Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formally known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico, prior to the approval of this Act; and *Provided*, further, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the

corresponding label containing the information prescribed by law and the regulations of the Treasurer.

During January, 1937, the plaintiff submitted to the Treasurer of Puerto Rico a proposed label for rum of the quality designated "consumo corriente", a product of less maturity than the high grade rum, which was intended for the lower price local market in Puerto Rico. Plaintiff received the approval of the Treasurer for the use of the "consumo corriente" label on January 27, 1937.

During the period since Act No. 6 took effect, all stocks of the high grade rum accumulating, were in the process of maturing for marketing under the regular Bacardi rum label, trade-marks, and brands which the plaintiff is authorized by the Cuban company to use and which are registered in the United States Patent Office, and in the office of the Executive Secretary of Puerto Rico as hereinbefore alleged.

(10) During the 1937 Regular Session of the Legislature of Puerto Rico an Act was passed, being Act No. 149, the title of which act reads as follows:

"AN ACT

To Amend Section 1 by Adding Section 1 (b) Which Declares the Principals and Policy of Act No. 6, Approved June 30, 1936, Entitled 'An Act to Provide Revenues for The People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits, and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose

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Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 115, Approved May 15, 1936; and for Other Purposes'; to Amend Section 40 of Said Act for the Purpose of Regulating the Use of Labels and of Imposing Conditions Upon Such

Persons or Entities as may Apply for Permits to Distill, Rectify, Manufacture, Bottle, or Can Rectified Spirits or Alcoholic Beverages in Puerto Rico; to Amend Section 44 of Said Act, by Imposing Conditions Upon the Holders of Such Permits; to Add Section 44 (b) to Said Act so as to Provide for the Volume of the Containers Used in Exporting Distilled Spirits From Puerto Rico; to Amend Section 97 of Said Act, by Providing for Remedies Before the Proper Courts; to Amend Section 106 of Said Act so as to Make it Effective Indefinitely, and to provide that this act shall take Effect Ninety Days After its Approval."

This Act was approved May 15, 1937, to take effect 90 days after approval *i. e.*, on August 13, 1937, which Act amended Act No. 6, approved June 30, 1936, as follows:

Section 1 of Act No. 149:

by adding in Section 1 (b) a "declaration of policy" to Section 1 of Act No. 6.

Section 2 of Act No. 149:

by amending Section 40 of Act No. 6 by adding to the label regulations provided in the said Section 40, additional requirements as to size of printing, size of certain phrases to be used; and providing, the additional requirements of relative sizes of printing of trademark or name of rum as compared to the printing of the name of manufacturer, distiller, etc., the amending additions to Section 40 of Act No. 6 being set forth in capital letters in the following transcription of Section 40 as amended:

"Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall

be obliged to have appear PROMINENTLY on the label the following phrase in English *Puerto Rican Rum*, in letters NOT LESS THAN FIVE-SIXTEENTHS (5/16) OF AN INCH HIGH AND OF LINES OF ONE-SIXTEENTH (1/16) OF AN INCH OR MORE IN WIDTH, SAID PHRASE TO BE NOT LESS THAN THREE (3) INCHES LONG. FOR CONTAINERS OF LESS THAN FOUR-FIFTHS (4/5) OF A PINT THE PHRASE *Puerto Rican Rum* MUST APPEAR ON THE LABEL IN LETTERS NOT LESS THAN ONE-EIGHTH (1/8) OF AN INCH HIGH, SAID PHRASE TO BE NOT LESS THAN ONE AND ONE-HALF (1½) INCHES LONG. On the label of every alcoholic beverage shall also appear the word distilled, rectified, or blended, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; PROVIDED, FURTHER, THAT THE TRADE

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MARK OR NAME OF THE RUM MUST APPEAR PROMINENTLY ON THE LABEL IN LETTERS OF A SIZE AT LEAST THREE TIMES THE SIZE OF THE LETTERS IN WHICH THE NAME OF THE MANUFACTURER, DISTILLER, RECTIFIER, BOTTLER, OR CANNER APPEARS."

Section 3 of Act No. 149:
by amending Section 44 of Act No. 6 by first substituting the following, in lieu of the Section of Act No. 6 quoted in paragraph 10 herein:

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trademark, brand, tradename, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or

any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; PROVIDED, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4 of Act No. 149:

by adding a new subsection, number 44 (b) reading as follows:

"Section 44 (b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; PROVIDED, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is

Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5 of Act No. 149:

by minor and unimportant amendments of the existing Section 97 of Act No. 6 and;

by adding a new sub-section to Section 97 (b), reading as follows:

"Section 97 (b).—Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6 of Act No. 149:

by making Act No. 6 as amended by Act No. 149 a permanent law.

Section 7 of Act No. 149:

by providing an additional clause relative to Section 44, reading as follows:

"Section 7.—In regard to trademarks only, the provision in the 'directing' part of Article 44 of Law No. 6, approved on June 30, 1936, shall be applicable as is hereby amended, to those trademarks that have been used exclusively in continental United States by a distiller, rectifier, manufacturer, or packer of distilled spirits prior to February 1st, 1936, provided that said trademarks were not used in whole or in part by a distiller, rectifier, manufacturer or packer of distilled spirits outside of continental United States at any time prior to said date."

(12) Each one of the acts of the Legislature of Puerto Rico

hereinabove cited in paragraphs 8, 9 and 10 of this bill of complaint contains arbitrary, capricious and unreasonable restrictions, discriminations and prohibitions which, plaintiff is informed and believes and states the fact to be, were directed solely at the plaintiff and no other entity doing business in Puerto Rico. In Act No. 115 an attempt was made to prevent the plaintiff and the plaintiff only, from using the regular registered trade-marks or labels

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which plaintiff has the right to use. In Act No. 6, a more specific sole discrimination was attempted in Section 44 thereof, and finally in Act No. 149, the Legislature in an obvious attempt to cure every omission in previous legislation which failed to discriminate effectively and completely against this plaintiff provided a complete prohibition as against this plaintiff only of the use of any of its trade-marks, trade names or designations whatever in connection with its product; to prevent this plaintiff from benefiting in any way from the value and good will incident to its lawful use of the Bacardi name and trade-marks or in fact, to do any business whatsoever using its own name.

Attached hereto is a Memorial which was addressed to the Legislature of Puerto Rico in February, 1937, by certain persons calling themselves the "Puerto Rican Rum Producers", which document is marked "Plaintiff's Exhibit Memorial". The plaintiff submits this exhibit for the sole and only purpose of showing that the provisions of the Acts of the Legislature of Puerto Rico hereinbefore specifically referred to were directed against the plaintiff alone, but the plaintiff does not adopt any of the facts, reasoning or arguments set forth in the said Memorial.

(12) The provisions of Act No. 149 which are referred to generally in the preceding paragraph are as follows:

(a) Section 2 of the 1937 law amending Section 40 of Act No. 6 approved June 30, 1936, provides certain regulations and limitations upon labels specifying the contents of the said labels, the size of lettering thereon, and providing for regulations thereunder

by the Treasurer of Puerto Rico, all of which is inconsistent with similar and controlling provisions of the Federal Alcohol Administration Act and proper regulations thereunder, which Act, as amended, is paramount and mandatory in Puerto Rico. Section 2 furthermore purports to regulate or provide the means of regulation of the labels of the plaintiff which holds Federal licenses granted to it by the Federal Government and the approval of plaintiff's labels by the Federal Alcohol Administration, hereinabove set forth. No label used in Puerto Rico by this plaintiff or by anyone can in any respect depart from the controlling regulations of the Federal Alcohol Administration. This section of Act

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No. 149 manifestly discriminates against this plaintiff by requiring that the brand name be three times the size of the name of the manufacturer. Plaintiff's brand name registered as a trade-mark and used on the labels in the United States and in Puerto Rico and which plaintiff is authorized by the owner thereof to use is "Bacardi" which is part of the name of the manufacturer.

Paragraph (b) Section 4 of Act No. 149 adds a new provision to Act No. 6 prohibiting the exportation and shipment to United States of distilled spirits, etc., in containers holding more than one gallon and plaintiff alleges that the purpose of said Paragraph (b) is to prevent this plaintiff from exporting its product in bulk from Puerto Rico and in using its labels and trade-marks which it has a right to use on the product manufactured by it in Puerto Rico and bottled elsewhere. This paragraph is illegal, unconstitutional and void, since it contravenes the Federal Alcohol Administration Act, and violates the Commerce Clause and the Fourteenth Amendment of the Constitution of the United States and also violates the due process clause of the Organic Act of Puerto Rico.

(c) Section 5 of Act No. 149 amends Section 97 of Act No. 6 approved June 30, 1936 by providing in Sub-section (a), in substance, a duplication of Section 97 of Act No. 6 and adding thereto Sub-section (b), whereby any holder of a permit may apply to a

court of competent jurisdiction through such ordinary and extraordinary proceedings as may be necessary to demand protection against violations of said Act on the part of other persons upon the giving of a bond in an amount not less than \$5,000 nor more than \$30,000. This sub-section permits the enforcement of the Act at the instance of a private person or common informer and in accordance with that person's private conception of the purport of the Act, even where such person may have sustained no legal damage whatever; and also by means of this general delegated authority effectually eliminates from such proceedings the designated administrative officers particularly the Treasurer of Puerto Rico, whose function it is to interpret and enforce the said Act, and thus subjects plaintiff to a multiplicity of suits. The additional provision in Sub-section (b) for bond limited as to minimum and maximum amount and placing the maximum at \$30,000 is manifestly an arbitrary and illegal attempt by the Legis-

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lature to deprive the courts of discretion to protect litigants. And plaintiff is informed and believes that holders of permits upon the coming into effect of said Act No. 149, on August 13, 1937, and thereafter, will file numerous and vexatious suits against this plaintiff with the sole purpose of destroying the business of the plaintiff in Puerto Rico, without posting bonds in sufficient amounts to answer for the damages caused thereby to the plaintiff.

(d) Section 3 of Act No. 149 amends Section 44 of Act No. 6 and was enacted not only specifically to prevent this plaintiff from conducting its business in Puerto Rico but to cure what this plaintiff believes was an oversight in both Acts hereinabove referred to. Section 3 more effectually deprives this plaintiff of its trademarks and the valuable good will appurtenant thereto than was effected by Section 44 of Act No. 6. The previous Acts failed to take from the plaintiff every remaining vestige of its property rights. This oversight has been cured by the prohibition in Section 3 of Act No. 149 prohibiting the use of any designation whatever to indicate the source or origin of plaintiff's product. This

result is attained by the provisos in Section 3 and in Section 7 of Act No. 149 and is applicable solely to this plaintiff. Plaintiff is informed, and believes and states the fact to be that subsequent to the passage of Section 3 it was discovered that one foreign entity other than plaintiff could not in fact qualify and continue in business under Section 3 because its trade-mark was not used in Puerto Rico before February 1, 1936, but it was presumably then discovered that this other entity differed from this plaintiff in that its manufacture had been confined to continental United States and its trade-mark had been used only in continental United States prior to February 1, 1936, whereas the trade-marks proposed to be used by plaintiff and which it is authorized to use, had been used not in continental United States only but in the Republic of Cuba and elsewhere, thereby making the combination of Sections 3 and 7 of Act No. 149 completely discriminatory against this plaintiff, and applicable to no one else. These combined sections permit all other entities, foreign and domestic, except the plaintiff, to con-

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tinue operation without restriction. Thereby, they deprive this plaintiff of the equal protection of the law guaranteed by the Constitution of the United States and the Organic Act of Puerto Rico and in addition they deprive this plaintiff of its property without due process by preventing the use of its name and trademark and the benefit of a valuable good will which such name and trademark symbolize.

(13) On February 20, 1929 there was signed and approved a Convention and Protocol by the United States and other American Republics for Trade-mark and Commercial Protection (U. S. Statutes at Large, Vol. 46, Part II p. 2907, Treaty Series 833). Said Convention has been duly ratified and proclaimed between the United States and the Republic of Cuba and is in full force and effect between such countries and, with respect to the United States, under Article VI, Clause 2 of the Constitution, is the supreme law of the land. Article XI of the Convention aforesaid provides that "the use and exploitation of trade-marks may be

transferred separately for each country" and Article 5 of the Protocol thereto provides for the transfer or assignment of trade-marks, "it being understood that the use of trade-marks may be transferred separately in each country". Article 3 provides that every trade-mark duly registered in one of the contracting states shall be admitted to registration or deposit and legally protected in the other contracting states.

The trade-marks of the Cuban company have been duly registered in the Patent Office in conformity with the United States Statutes, under the terms of this and prior conventions. Certain of these trade-marks have also been registered under the laws of Puerto Rico in the Office of the Executive Secretary. Act No. 149 of 1937 prohibits the use of said trade-marks by the plaintiff and therefore, deprives the plaintiff of rights under the Convention aforesaid and of the Act of Congress of February 20, 1905. The said Act No. 149 prohibiting the plaintiff from using said registered trade-marks is contrary to the purpose of the Convention between the United States and the Republic of Cuba, which is to insure international protection and unobstructed use of the trade-marks of the nationals of the contracting states. Act No. 149 not

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only frustrates the intent of said Convention but might provoke retaliatory action against American citizens by other countries signatories to that Convention.

(14) The value of the right of which plaintiff will be deprived by the enforcement of the said Act No. 149 of 1937 is greatly in excess of \$3,000, exclusive of interest and costs. Said Act involves the destruction of plaintiff's name and the right to trade-marks worth in excess of several million dollars, the right to use which plaintiff has lawfully acquired.

(15) Defendant Rafael Sancho Bonet is Treasurer of Puerto Rico and is charged under the laws of Puerto Rico with the duty of executing them including Act No. 149 and the Act which it purports to amend; that said Acts in the particulars hereinbefore

alleged are unconstitutional and void and the acts themselves and the execution thereof will irreparably damage this plaintiff.

(16) Plaintiff is damaged by the said Acts and the execution thereof by the defendant, in the following particulars among others:

Plaintiff cannot undertake any plans for future operation or obtain such further supplies and equipment as will be indispensable for the carrying on of its business in Puerto Rico. By reason whereof it cannot continue to make rational plans for the future.

Plaintiff is now ready to ship in bulk to the United States a considerable amount of rum distilled in Puerto Rico and held here on hand by the plaintiff, but plaintiff will be prevented from so doing and will thereby suffer considerable damage on account of the unreasonable, arbitrary, illegal and unconstitutional provisions of said Acts limiting the size of containers prescribed for shipments from Puerto Rico to continental United States.

Plaintiff is now ready to ship in excess of 10,000 cases of bottled goods per month, amounting to upwards of \$100,000 in value. The salability of such product will be greatly lessened, if plaintiff is prevented from using in connection therewith the trade-marks and names which plaintiff has the right to use and which represent

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a valuable good will, and the product aforesaid is in fact of the same high quality and character as the product heretofore sold in the United States including Puerto Rico under the name Bacardi.

(17) Plaintiff avers that the following sections of Act No. 149 are unconstitutional and void:

Sections 2, 3, 4 and 5 (insofar as Section 5 adds sub-section (b) to Section 97 of Act No. 6) and Section 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend because they and each of them are contrary to and violate

1. The Fifth and Fourteenth Amendments to the Constitution of the United States and the Commerce Clause thereof, Article 1, Section 8, Clause 3.

2. Section 2 and 9 of the Organic Act of Puerto Rico approved March 2, 1917, Chapter 145, Laws of 1917.
3. The "Federal Alcohol Administration Act", approved August 29, 1935, as amended.
4. The Convention between the United States and Cuba. Treaty Series, 833, U. S. Statutes at Large, Vol. 46, page 2907, signed February 20, 1929, proclaimed by the President of the United States, February 27, 1931.

Section 44 of Act No. 6 is also void and of no effect because the subject matter of said section is not embraced in the title of said Act, as required by Section 34 of the Organic Act of Puerto Rico. That Sec. 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that Section is not mentioned in the title of the Act.

The plaintiff has no plain, complete and adequate remedy at law.

Wherefore, the plaintiff prays—

- (a) That the defendant be required to answer this bill of complaint (answer under oath being waived).
- (b) That this court declare that the sections of Act No. 149 and each of them specified herein are unconstitutional and void.
- (c) That the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, and all others having authority to enforce said Act and each of them and all persons acting in concert with them or by, through or under them and all holders of permits under Act No. 149 of May 15, 1937 and laws amended

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thereby, be enjoined, at first during the pendency of this suit and afterward perpetually from enforcing or attempting to enforce against this plaintiff the provisions of Sections 2, 3, 4 and 5 (insofar as Section 4 adds sub-section (b) to section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend.

(d) That the court issue an order directed to the defendant to show cause, if any he has, at such time as court may think proper, why a preliminary injunction should not issue in this case.

Plaintiff also prays for such other and further relief as the court may deem proper.

Plaintiff prays the usual process of this court directed to the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, to appear and answer this bill of complaint and abide the further orders of the court.

DANIEL F. KELLEY,
HARTZELL, KELLEY & HARTZELL,
by RAFAEL FERNANDEZ,
Solicitors for Plaintiff.

UNITED STATES OF AMERICA.

TERRITORY OF PUERTO RICO,

CITY OF SAN JUAN.

Jose M. Bosch, being first duly sworn upon oath deposes and says that he is the vice-president of the Bacardi Corporation of America, complainant in the foregoing bill of complaint; that he has read said bill and knows the contents thereof, and affiant states that the averments therein contained are each and all true of his own knowledge, except those alleged on information and belief and these he believes to be true.

This verification is made by deponent and not by complainant for the reason that complainant is a corporation.

JOSE M. BOSCH.

Affidavit No. 1433.

Subscribed and sworn to before me by the said Jose M. Bosch, on this thirtieth day of July, 1937.

JUVENAL SOSA.

25-cent excise tax cancelled by notarial seal.

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PLAINTIFF'S EXHIBIT BACARDI REGISTRATIONS.

Registered May 2, 1933

Trade-Mark 302,916

UNITED STATES PATENT OFFICE

COMPANIA RON BACARDÍ, S. A., OF SANTIAGO DE CUBA, CUBA

ACT OF FEBRUARY 20, 1905

Application filed October 24, 1932. Serial No. 331,482.



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and present herewith five specimens showing the trade-mark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

Applicant is the owner of international registration No. 172, June 20, 1920, and U. S. registration No. 284,224 to 284,228, inclusive, June 16, 1931.

No claim is made to the words "Trade Mark" appearing on the drawing.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, Number 39,639, January 12, 1930.

John Iimirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoint John Iimirie, of Munsey Building, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

(L. S.) COMPANIA RON BACARDÍ, S. A.
 By PEDRO E. LAY,
 Vice President.

Q1

Registered Mar. 6, 1934

Trade-Mark 310,654

UNITED STATES PATENT OFFICE

Compañía Ron Bacardi, S. A., Santiago de Cuba,
Cuba

Act of February 20, 1905

Application November 18, 1933, Serial No. 343,592

BACARDI

STATEMENT

To the Commissioner of Patents:

Compañía Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba, Cuba, and doing business at Aguilera baja 32, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents here-with five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since 1862. The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

The mark has been in actual use as a trade-mark by the applicant and applicant's predeces-sors from whom title was derived for ten years next preceding February 20, 1905, and such use has been exclusive.

Applicant is the owner of international registration Nos. 172, dated June 29, 1920; 176, dated June 29, 1920; 503, dated June 30, 1921; and U. S.

registrations Nos. 284,238 dated June 16, 1931; 284,227 dated June 16, 1931; 303,916 dated May 2, 1933; 302,976 dated May 2, 1933; 284,236 dated June 16, 1931; 284,225 dated June 16, 1931; 284,234 dated June 16, 1931; and 285,366 dated July 21, 1931, and 20,172 dated September 20, 1891.

Said trade-mark has been registered in the Republic of Cuba, No. 30,513 April 20, 1929.

John Inmirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Inmirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certifi-cate, and to transact all business in the Patent Office connected therewith.

COMPANÍA RON BACARDI, S. A.
By LUIS J. BACARDI,
Vice-President.

Registered Sept. 3, 1935

27
Trade-Mark 327,649

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,823

BACARDI Y C^{IA}

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago, Republic of Cuba, has adopted and used the trade-mark known in the accompanying drawing, for RUM, in Class 49. Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The mark has been in actual use as a trademark by the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905 to-wit 1892, and such use has been exclusive.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed there-

on. Applicant is the owner of registration No. 310,654.

An application for registration of said trademark was filed in Cuba on April 3rd, 1934, registered May 24, 1935, No. 44,339.

John Imlie, whose postal address is Munsey Building, Washington, D. C., is designate, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imlie, of Munsey Building, Washington, D. C., his attorney with full power of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By LUIS J. BACARDI.
Vice President.

28

Registered Jan. 7, 1936

Trade-Mark 331,459

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application December 21, 1934, Serial No. 339,533



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1930. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 284,234 Compania Ron Bacardi, S. A., June 16, 1931; 284,235 Compania Ron Bacardi,

S. A., June 16, 1931; 302,915 Compania Ron Bacardi, S. A., June 16, 1931; 310,650 Compania Ron Bacardi, S. A., May 2, 1931; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Iimirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Iimirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice-President.

Registered Jan. 7, 1936

29
Trade-Mark 331,460

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application December 21, 1934, Serial No. 329,528



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organised under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled spirituous liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 284,225 Compania Ron Bacardi, S. A.

June 16, 1931; 284,228 Compania Ron Bacardi, S. A., June 16, 1931; 284,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notices of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice President.

30

Registered Aug. 4, 1936

Trade-Mark 337,254

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,822

**CARTA DE ORD
BACARDI Y C^{IA}**

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1867; and the words "Bacardi y Cia" have been used since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registrations No. 310,654, and No. 284,228.

An application for registration of said trade-mark was filed in Cuba on April 3, 1934, and registered January 27, 1936, No. 55,526.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceeding affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and reversion, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By LUIS J. BACARDI,
Vice President.

31
Registered Sept. 1, 1936

Trade-Mark 338,241

UNITED STATES PATENT OFFICE

Compañía Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,835

CARTA BLANCA
BACARDI Y C^{IA}

STATEMENT

To the Commissioner of Patents:

Compañía Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herein five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia" since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. An application for registration of said trade-

mark was filed in Cuba on April 3rd, 1934, registered November 28, 1935, No. 55,273. Applicant is the owner of registrations No. 310,054, and No. 284,225.

John Imiric, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceeding affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imiric, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANÍA RON BACARDI, S. A.
By LUIS J. BACARDI,
Vice President.

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PLAINTIFF'S EXHIBIT APPROVAL OF LABEL.

Form L 5 Treasury Department.
Federal Alcohol Administration February, 1936.

**CERTIFICATE OF APPROVAL OF LABELS OF DOMESTICALLY BOTTLED
DISTILLED SPIRITS.**

Date May 18, 1937.

Pursuant to the application of Bacardi Corporation of America, whose address is San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering Carta De Plata (brand name), Puerto Rican Rum (class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statement of net contents appearing thereon in conformity with Section 37 of Regulations 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32 (c) of Regulations 5, (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government label, if required, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from the failure of any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. E. ALEXANDER, RWR Administrator,
Federal Alcohol Administration Washington, D. C.

PLAINTIFF'S EXHIBIT APPROVAL OF LABEL.CARTA DE PLATA⁶**PUERTO RICAN RUM***Ron Superior*

DISTILLED & BOTTLED BY

BACARDI CORP.

OF AMERICA

SAN JUAN, P.R.

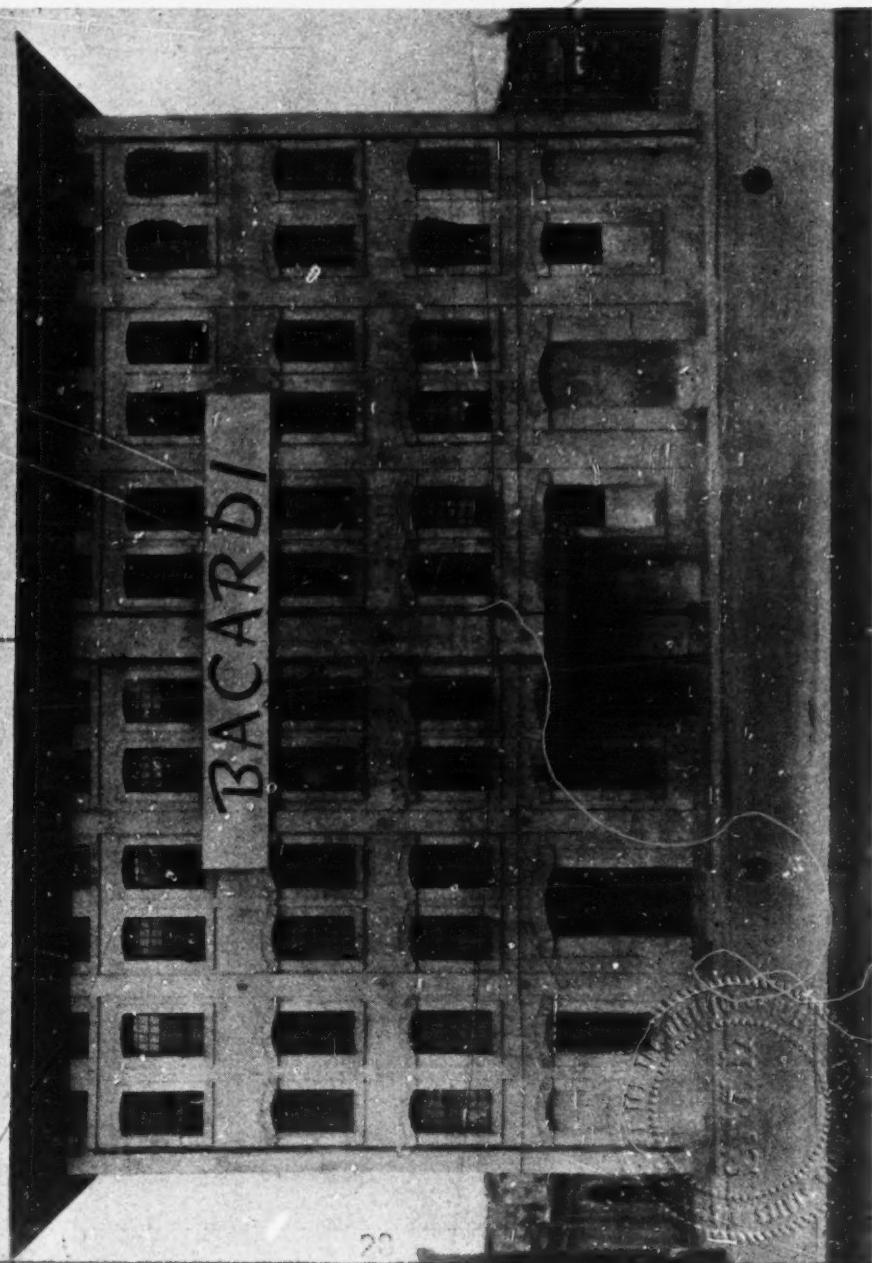
89 PROOF - 4/5 QUART



Produced in Puerto Rico by special authority and under the supervision of
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PLAINTIFF'S EXHIBIT PHOTOGRAPHS OF PLAINTIFF'S PLANT.



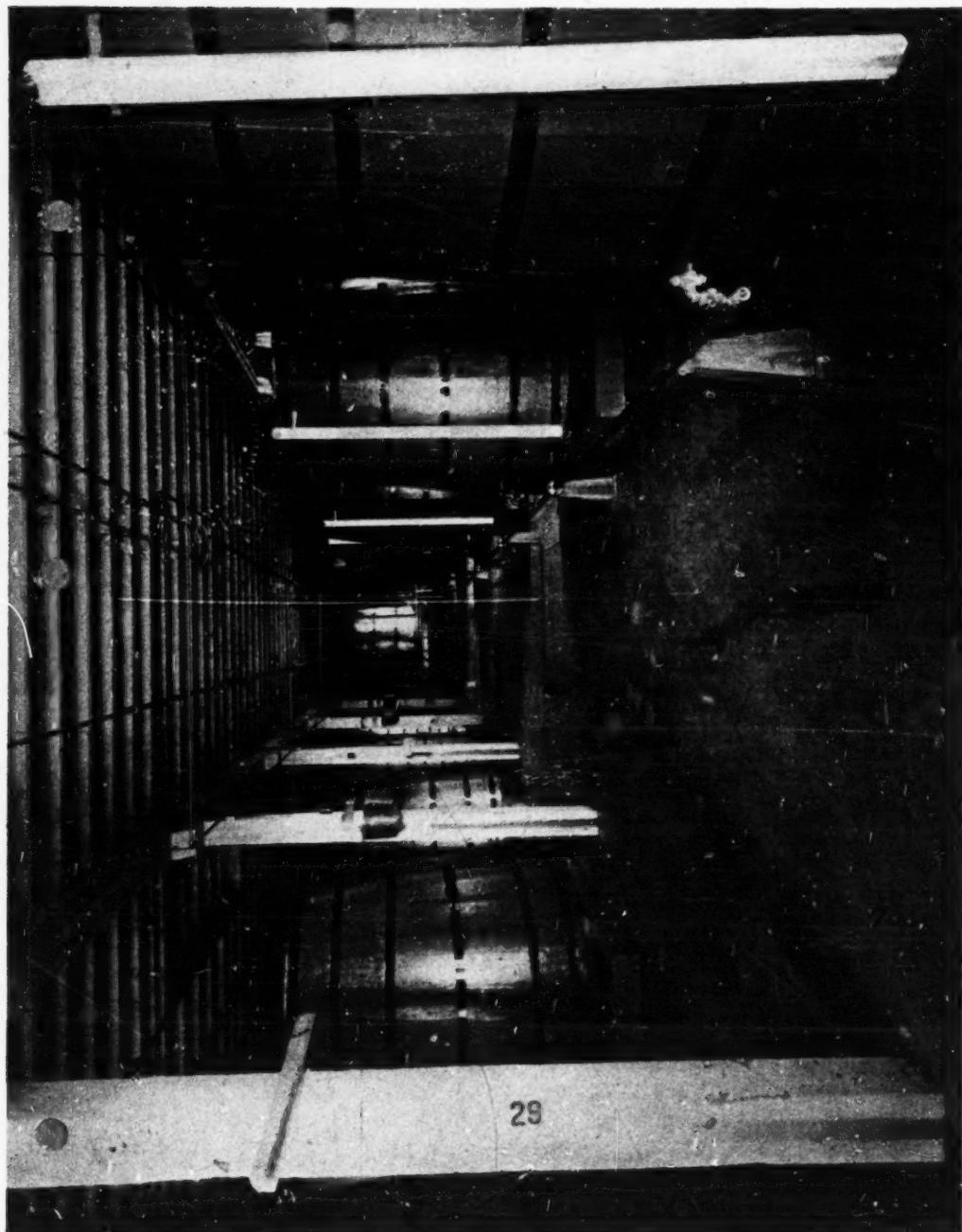
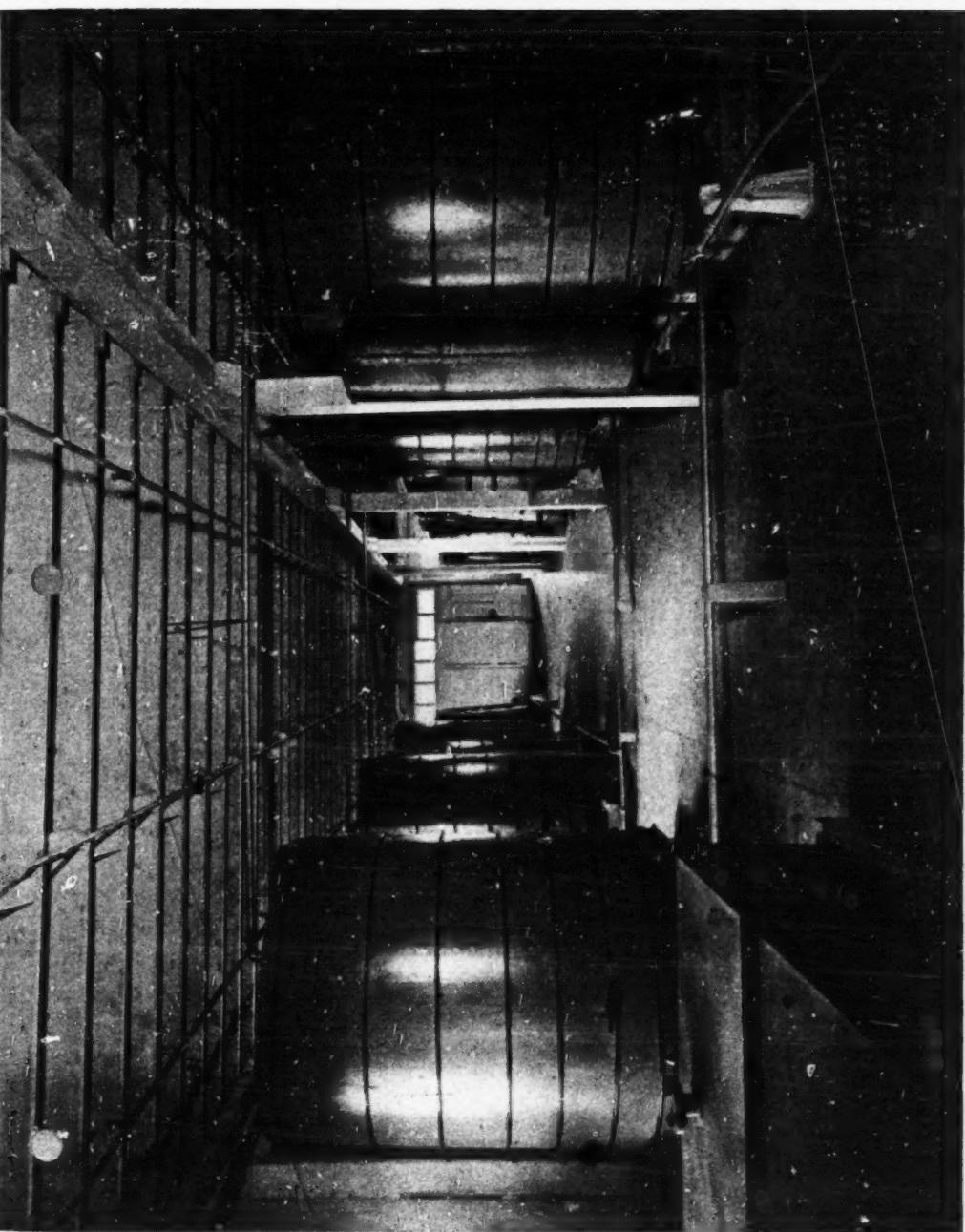
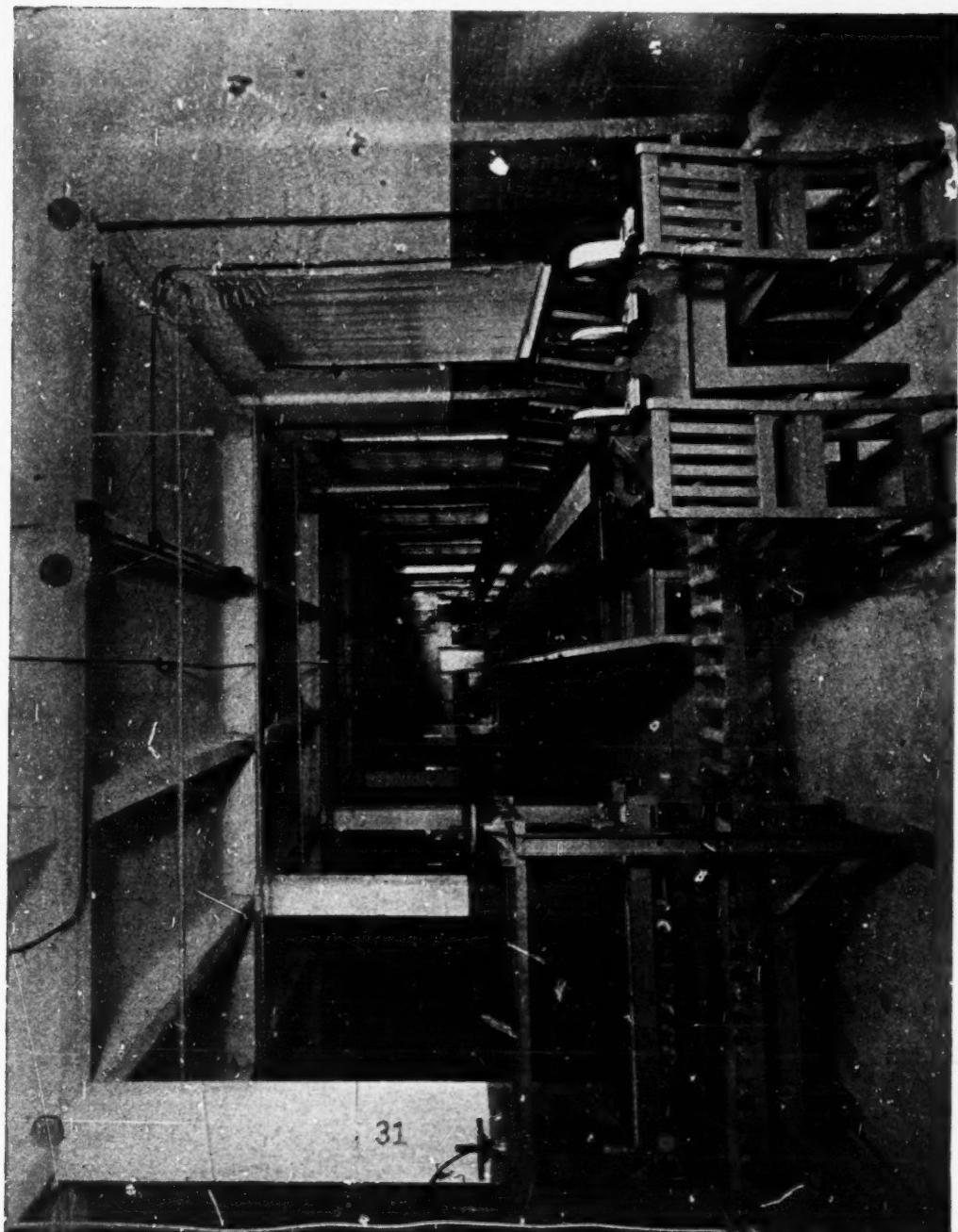


Exhibit Photographs of Plaintiff's Plant.

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Transcript of Record of District Court.



PLAINTIFF'S EXHIBIT MEMORIAL.**MEMORIAL ADDRESSED TO THE LEGISLATURE OF PUERTO RICO BY
PUERTO RICAN RUM PRODUCERS.**

Honorable Sirs:

The undersigned, producers of Puerto Rican rum, have the honor to address this memorial to you seeking a fair protection for an industry which, although at the inception of its development, has a brilliant future, to be of great economic benefit to the community, should the Legislature of Puerto Rico, ever attentive to whatever spells progress and well-being, give it all the encouragement it merits.

Antecedents.

First.—The 18th Amendment to the Constitution of the United States prohibiting the manufacture, sale, and transportation of intoxicants became effective as of January 29, 1920.

Second.—Since March 2, 1918, the Island of Puerto Rico, through a mandate of its electorate, had adopted "prohibition".

Third.—The 21st Amendment to the Constitution of the United States repealed the 18th Amendment thereof, and such repeal was effective as of December 5, 1933.

That is to say that Puerto Rican capital was prohibited from engaging in the liquor business during a long period of 15 years, 9 months and 3 days. Meanwhile, during the same period of time, the other islands of the West Indies, with Cuba leading, profited from a very lucrative liquor business.

Fourth.—Rum made in Cuba and other rum-producing countries pay, upon entering the United States market, the sum of \$4.80 per case.

This means that Cuban rum, for example, when sold in the United States, has to cost \$4.80 more per case to the consumer of that kind of beverage. This protection of \$4.80 per case is the one enjoyed by Puerto Rican rum, at present, over and above that of the other rum-producing countries which contemplate capturing the immense market of the United States.

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Fifth.—On May 15, 1936 the Legislature of Puerto Rico approved Law No. 115 whose short title was "Alcoholic Beverage Law of Puerto Rico".

Section 41 thereof provided:

"C.—The following persons shall be entitled to permits upon application:

.....
(2) Any other person who may fully comply with the following requisities:

.....
(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

.....
(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico.

.....
(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; Provided, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name, or trade-mark used by a manufacturer, rectifier, distiller or bottler of

distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico.

(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico."

Sixth.—At its extra session of 1936, the Legislature repealed the law above transcribed in part through Law No. 6 of June 30 of the said year. This latter law—which is now in full force and effect—contains the following provision:

"Section 44—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name

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has been used on similar products manufactured in Puerto Rico or outside of the Island; **Provided**, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; . . .

Protection is Evident

The provisions of these two laws clearly reveal one same spirit: that of protecting the infant liquor industry of Puerto Rico. Furthermore: article 40 of Law No. 6 above cited provides, in an imperative manner, that our rum-producers shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum". All these facts indicate that the mind of the Puerto

Rican legislator was bent upon the United States market, and imply at the same time a policy, inspired by a sane and natural patriotism, to protect a native industry through every legal mean at his command.

While it is true that certain foreign trade names enjoy a much wider reputation in the United States today than do those established recently by local interests, it is nevertheless a fact that these local interests are able to compete for the United States market by reason of the fact that they are protected by tariff walls from encroachment by foreign enterprises, thereby permitting them to sell their merchandise in the Continental market at a price substantially lower.

An Attractive Price Controls

Granting that quality is the same, then, a difference in price, regardless of a brand name, makes an article attractive from a purchaser's standpoint. Yet, a certain amount of advertising, necessary to foster a demand for the cheaper product, explaining the reasons for the difference in price creates a very favorable impression with the purchasing public, an impression which in time nullifies the advantage enjoyed by the foreign producer. This advantage can be attributed solely to a trade name made famous during the year when it was unlawful for native capital to engage in similar enterprises.

This policy is now pursued by rum manufacturers in Puerto Rico on a cooperating basis with the paramount idea of advertising to the consuming public the fact that Puerto Rican rum is superior in quality to that produced in any other part of the West Indies, thereby creating, not only a market for our native rum but making the entire purchasing public in the United States conscious of the fact that Puerto Rico is part of that great nation. Thus, a market is also created for any one in Puerto Rico who has something to sell to the American public.

Puerto Rican Rum Leads

We wish to point out that it is the aim of the distiller in Puerto Rico to make the American public conscious of the Island of

Puerto Rico. This policy has been unanimously agreed upon by the local distillers and is now being practiced in all advertising which is being released by any of them.

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The adoption of such a policy has produced the very definite and flattering results of placing Puerto Rican rum in demand in the United States market to the extent where it is today: **it is outselling by 15% the total of all other rums combined imported in the United States.**

These figures are published by the United States Customs Service at the port of New York. They can be substantiated at any moment. It is consequently obvious that the bulk of the business which formerly went to foreign manufacturers is now enjoyed by the Puerto Rican producers. This being the case, it obviously must follow that, since this business is being enjoyed by local capital, the local capital is paying Internal Revenue taxes on this liquor which is exported to the United States directly. Since the existing market was captured by the Puerto Rican rum-producer, all the revenue from the sale of all the product in the United States is now being collected by the Treasurer of Puerto Rico **in crescendo.**

Results to Which Foreign Competition Would Lead

Should the foreign producer be allowed to locate in Puerto Rico, all he can offer is that he will take away a large part of the market from the native producer. The revenue now being paid by the local producer from his sales in the United States (a revenue which is covered into the Insular Treasury) will be paid partially by the foreign manufacturer and partially by the surviving local producer. In other words, the same amount of revenue will be collected by the Insular Treasury. There will be a substitution of taxpayers: the local producer will yield his place to the foreign manufacturer.

On the other hand, the foreign manufacturer is in no way interested in building up a name for fine quality rum produced in

Puerto Rico, as he already enjoys a name for producing fine rum. He is merely interested in coming to Puerto Rico because others have built a favorable name in the United States market due to advertising by local capital interested in the rum business and simultaneously interested in the general welfare of Puerto Rico.

It must also be remembered that certain moneys are today collected by Customs authorities on foreign rum imported to this Island. Revenues collected from this source at present amount to well over \$100,000; but should the foreign manufacturer be permitted to locate in Puerto Rico that revenue will no longer be available as no customs duties will be paid on the product.

Why Puerto Rico is Chosen

Since this condition is rapidly becoming established throughout the United States and since Puerto Rico presents a favorable location due to the political fact that it is one of the islands in the West Indies which is not separated from the United States by tariff barriers, then it becomes the only favorable spot where a foreign manufacturer can locate and take advantage of a condition created by the undersigned and which rightfully belongs to Amer-

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ican and Puerto Rican capital by reason of the fact that they are entitled to the highest degree of protection because they were prevented from carrying on the rum industry during the era of prohibition in the United States when it was unlawful for them to build a favorable reputation which they are now rapidly acquiring through the medium of advertising—an advertising which has cost nothing to the foreign producer.

Our Contribution to the Treasury

We also wish to point to the fact that according to United States Bureau of Internal Revenue figures, for the year beginning June 30, 1934 and ending June 30, 1935, there was imported to the United States from all rum-producing countries, approximately 200,000 cases of rum. This represents approximately \$1,000,000

in excise-tax revenue. Against these figures a certain local producer has already paid the Insular Government nearly **half a million dollars**, during the calendar year 1936, in United States Internal Revenue Taxes. Based on these figures, it is safe to estimate that all local distillers combined will pay **one million dollars** to the Insular Treasury during the calendar year of 1937. This is equal to the total income derived from all imported rum to the United States during the fiscal year above mentioned. Other local distillers are rapidly coming into the continental United States market, thereby increasing the collection of United States Internal Revenue Taxes by the Treasurer of Puerto Rico.

The Fallacies Which are Broadcast

A certain foreign producer who is now interested in locating in Puerto Rico has mentioned the fact that he will offer employment to more than 300 workers in his plant. This statement can be very seriously doubted, but even though we grant that this number of workmen may be employed, it is a fact that today more than 1,500 workers are being employed by the existing rum industry in Puerto Rico.

Should this foreign producer be allowed to come to Puerto Rico he will enjoy a singular advantage because of his world famous name which will strangle the local industry before it has had an opportunity to really getting started. It must necessarily follow that although 300 workers may be employed by the foreign producer, the present number of employees, amounting to approximately 1,500, must inevitably lose their positions because of the inability of the infant industry to compete now against a product which has been on the market and acquired a favorable reputation over the years when our local industry was prevented from making itself known.

The distinctive name as well as the individual character of Puerto Rican rum must inevitably become suppressed by the foreign manufacturer's known trade-name which is not connected in any way with Puerto Rico but is rather known as a product of one of

the other West Indies islands which is not a part of the United States. Obviously, the foreign producer would never have considered coming to Puerto Rico were it not for the fact that Puerto

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Rican rum is hurting his business and taking a large part of the market in continental United States which the foreign producer previously enjoyed exclusively to himself. Because of tariff protection, the local industry has gradually been able to establish a reputation for itself and a favorable name which is driving the foreign producer to locate on American soil if he wishes to retain the lucrative market in the United States. This foreign producer has already attempted to locate within the boundaries of the continental United States in the city of Philadelphia, where he failed in his plans.

It has been argued also that the foreign producer, if he is not allowed to locate here, will go elsewhere in American territory. Prominently suggested, as the biggest threat, among locations, is the Virgin Islands. But there are two good reasons, and many others, why this foreign manufacturer will not locate in the Virgin Islands. At present there is not sufficient water available, even for the existing manufacturers there. Furthermore the United States Government is already interested in the rum business in the Virgin Islands by reason of its financing the Virgin Islands Company, which are the largest producers of rum. It is scarcely likely, therefore, that the United States Government will welcome such competition to its own interests. So far as another attempt to locate in continental United States is concerned, it can be definitely stated that such an attempt will not be made by the foreign producer. It is a recognized fact that the type of rum which the American public prefers—such as that produced in Puerto Rico—cannot be duplicated in quality by manufacturers in continental United States. As proof of this statement, there are today several producers in the continental United States who are attempting to market a type of rum which they claim is similar to that manufactured by the foreign producer. Although this rum has been offered

for sale by large concerns for more than three years, in the United States market, they had but very small acceptance by the American public. Moreover, Americans associate rum with the West Indies and are not interested in any rum which is not manufactured in the West Indies. For the same reason it is impossible to get the American public to accept American-made Scotch Whiskey or American-made French Champagne, or various other substitutes for foreign beverages. Moreover, the foreign manufacturer realizes that a very favorable reputation is now being built for Puerto Rican rum, and this is, therefore, the main reason why he is interested in exploiting his own name to the disadvantage of Puerto Rico. We offer as proof of this statement the fact that, although prohibition has been repealed for more than three years, the foreign producer has not considered coming to Puerto Rico until very recently, since the name established by a local manufacturer has become well known in the United States by reason of the advertising which is being broadcast concerning the merit of rum produced in Puerto Rico.

Where the Monopoly Would Lie

It has been stated that local rum manufacturers are attempting to obtain a monopoly of the rum business in Puerto Rico because they are trying to prevent the foreign manufacturer from locating here. We wish to emphatically state that if the foreign producer were allowed to come to Puerto Rico, within a very short space of time he would enjoy, by far, the majority of the

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business available in the continental United States as well as in the Island of Puerto Rico because of his undeniable famous trade name. This would create the greatest absentee monopoly ever experienced on the Island of Puerto Rico and would mean the stifling of the present infant industry, which is attempting to compete with him on a price basis today. It can hardly be considered a monopoly when a group of local producers band together to fight a common enemy and to protect their investment,

which today amounts to more than \$2,000,000, invested in the future of this industry. We are only asking something which in justice is rightfully ours because we are entitled to the protection of the Puerto Rico Government against the encroachment of foreign capital and a famous name which was built up at a time it was unlawful for local interests to engage in this business. Tariff walls are erected by the United States Government to offer such protection as this. This is all that the local industry asks for, at least until such time as we are sufficiently strong to compete with foreign producers. If such protection is granted, it is safe to say that within a very short space of time, Puerto Rico will be known as the greatest producer of rum in the world and this reputation we should like to keep for Puerto Rico and Puerto Rican capital.

Those critics imputing monopolistic ideas clearly reveal their great innocence coupled with an abysmal ignorance regarding the policy of every government today. While the instinct of self-preservation of all the peoples of the earth builds up high protective walls around every frontier, there are still some who call protection "monopoly" and "selfishness" is imputed to self preservation. The present administration of the United States did not change an iota of the tariff-law written by its predecessor. And this has been so despite the fact of the two different economic attitudes. The day in which the government of Puerto Rico should lack an economic mind, that day native capital, far from venturing into new activities, will remain lethargic because of lack of stimulation and aid. A prosperous rum industry will mean a greater income to the Treasury, a larger income to laborers and a general and greater well-being for all. In another chapter below we will show how other communities protect themselves from outside producers.

Historical Data

History tells us that Puerto Rico was the first island in the West Indies to produce rum. Rum was distilled here as early as 1575. Since then up to 1918 its production was one of our most important industries, and large quantities were exported to foreign countries. It was Puerto Rico distillers who taught that art in

Cuba, and large quantities were exported to that country up to the time of the Spanish-American war. From official sources we know that Spain, Cuba, Africa, the United States, England, France, Italy, and other countries, were purchasers of large quantities of Puerto Rican rum, a great part of which was used as a blend to improve the liquor of those countries.

This is proof of the fact that rum distillation was a very important industry in Puerto Rico during the 19th century and the beginning of the 20th, and is also indisputable proof of the fact that the rum industry is not a new one here, which is the reason

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why we say that Puerto Rico rum is willing to compete on an equitable basis with rum manufactured anywhere else in the world.

Both the Present and the Former Alcoholic Beverage Law are
Constitutional

We respectfully refer again to the provisions of laws Nos. 115 and 6 of 1936 above quoted at the beginning of this memorial. We wish to point out that both laws were approved by the two Chambers, by large majorities, last year. The idea that our industry deserved protection was unanimous. The votes against said laws (1) sprang from doubts as to the constitutionality of the same. If any discrepancies occurred among legislators, those were of a technical, constitutional nature. Generally, all showed themselves willing, as usual, to encourage the industries of the Island.

A narrative of the leading decisions handed down recently on the subject, will give a comprehensive idea of the juridical status of the problem. We shall proceed by citing decisions from lower courts up to the highest of all—the Supreme Court of the United States.

1.—In *Triner Corporation v. Arundel et al.*, 11 F. Supp. 145, decided June 29, 1935, the Minnesota Federal Court decided that the 21st Amendment did not except the states from complying with the commerce (2) and equal protection (3) clauses of the Constitution of the United States. Therefore, it held that a Min-

nessota statute which discriminated against liquor importers, was unconstitutional because it violated the clauses above referred to. We do not know whether this case was ever appealed to the Circuit Court.

2.—In *General Sales and Liquor Co. v. Becker*, 14 F. Supp. 348, decided by a Missouri Federal Court on February 10, 1936, it was held:

"In exercise of police power for protection of public morals, public health, and public safety, state may prohibit manufacture and sale of intoxicating liquor or may regulate and supervise manufacture and sale thereof *in such manner as it conceives to be necessary and proper*.

"Under constitutional amendment and federal statute prohibiting importation of intoxicating liquor into state in violation of law thereof, importation of intoxicating liquors in violation of state law is outside protection of commerce clause."

Up to now, we have these two contradictory decisions from lower courts.

3.—In *Riggins v. District Court of Salt Lake County*, 51 P. (2d) 645, the Supreme Court of Utah decided that:

"Provision of Twenty-First Amendment (4) prohibiting transportation or importation of intoxicating liquors into any state in violation of state law *was intended to enlarge rather than to restrict powers of states to control intoxicating liquors*.

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"Under Twenty-First Amendment, state can prohibit its inhabitants from importing intoxicating liquor for their own use.

"Liquor Control Act prohibiting sale of intoxicating liquors in Utah and providing that places where such liquors were illegally sold were common nuisances held not violative of Twenty-First Amendment."

4.—In *State v. Andre*, 54 P. (2d) 566, the Supreme Court of Montana decided on January 31, 1936, that:

"Statute prohibiting sale of intoxicating liquor by private individuals or corporations and providing for distribution thereof by state through system of stores held not unconstitutional interference with power of Congress to regulate interstate commerce, in view of Twenty-First Amendment."

5.—In *State v. Arluno*, 268 N. W. 179, the Supreme Court of Iowa decided on June 19, 1936, that:

"Iowa Liquor Control Act prohibiting manufacture and sale, keeping for sale, or transportation of liquor for any purpose except upon conditions set forth therein, held not violative of commerce clause. . . ."

6.—In *People v. Ryan*, 289 N. Y. S. 141, decided by the Supreme Court of New York on June 29, 1936, it was held:

"Under Twenty-First Amendment to United States Constitution, repealing Eighteenth Amendment, New York Legislature could forbid transportation or importation of intoxicating liquors into New York."

"Twenty-First Amendment to United States Constitution, repealing Eighteenth Amendment, held to permit Legislatures of the several states to regulate interstate commerce of intoxicants."

7.—In *Young's Market Co. et al. v. State Board of Equalization of California et al.*, 12 F. Supp. 140, decided by the Federal Court of California on September 21, 1935, it was held:

"The state statute drawing a distinction between wholesalers of beer manufactured in the State and those selling that which is imported in the State, is void because it violates the commerce and the equal protection clauses of the Constitution of the United States."

The statute to which this case refers imposes a license fee on

imported beer manufactured outside of California. Its object is evident: to protect a native industry from the competition of beers, not from Cuba or other foreign islands, but from other sister states of the Union. The importation fee was aimed at the great beer centers of St. Louis (Missouri) and Milwaukee (Wisconsin). The lower Federal Court, basing itself on the same grounds propounded by the Puerto Rican legislators who voted against laws Nos. 115 and 6 of 1936, held such statute was unconstitutional.

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8.—But the Supreme Court of the United States, in *State Board of Equalization of California v. Young's Market Co.*, recently decided—on November 9, 1936—reversed the decision referred to in the preceding subdivision. This decision, being a momentous one, is transcribed in its entirety in the Appendix.

All previous doubts were completely dispelled when the Supreme Court of the United States handed down this unanimous, transcendental decision on November 9, 1936. According to the Supreme Court, the 21st Amendment of the Constitution granted to the Legislatures of the States, Territories and possessions plenary powers as to liquor legislation. The constitutional clauses which used to act as iron limitations to such power, were torn asunder when the 21st Amendment was adopted. In liquor matters, our Legislature, in accordance with the Supreme Court of the United States, has the unlimited powers of an independent nation with full sovereignty to act.

It has the power to—

- (1) prohibit entirely the manufacture and sale of intoxicating liquors; or
- (2) prohibit the importation of a given kind of liquor; or
- (3) tax the importation of the same through license fees; or
- (4) establish a state monopoly of the liquor traffic; or
- (5) allow liquor sales only at certain stores; or
- (6) prohibit "all competing importations"; or
- (7) "channelize desired importations by confining them to a single consignee".

If our Legislature, as we have seen, can do the greater, it can do the lesser. If it has the power to do the whole, it has the power to do the part. If it can prohibit "competing importations"—not as against the foreigner only but also as against the other political entities of the Union—it has also the power to prohibit a foreign producer, who owns a famous brand, from locating in Puerto Rico (within the protecting tariff wall) to manufacture a Puerto Rican product but under the name made famous as of another country. The present American tariff-law was not meant to offer protection to foreign brands. If in the space of the two years in which our industry has been established, it did capture the American market, the factors for said capture being the quality of our product and the protection afforded by the tariff. How much more could not the native producer do should stability and protection be afforded him by law?

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Constitutional doubts being dispelled by the highest court, light has been shed in your way. We do not ask action through prejudices against other peoples: we ask of you to act through your instinct of preservation and patriotism, within the unlimited and untrammeled powers granted you by the 21st Amendment of the Constitution as construed by the decision of November 9, 1936.

A thorough perusal of the entire decisions above cited in part will give a complete history of how the States of the Union protect themselves not from the foreigner but from each other. Those honest differences of opinion which did spring up among our legislators, will disappear as soon as a thorough study of the decision appearing *in toto* on the appendix is made.

Before concluding we will say that the legislature of the State of Georgia recently approved a law prohibiting the sale of wines not made from products of that State. (See the December, 1936, number of "Mida's Criterion", p. 77).

We Demand Stability

The present beverage law suffers from a capital defect, in our opinion: the short term of its duration. It is a ~~law~~ perfectly

divisible in two parts: one part, which could be called administrative, and the other, revenue-raising. It causes no harm if this latter part should be effective only for a short period of one, two or three years; but the administrative part—that which lends structure to an industrial enterprise—ought to offer a greater degree of stability and permanence by being effective for an indefinite period of years, as all fundamental laws are. Banking credit, plans for greater expansion and aggressiveness for betterments do suffer from the natural timidity inherent to a business regulated by a law which is effective for one year only. It is well that the revenue-raising part should be effective for a short period; but not so the organic, fundamental part. This would not operate as an obstacle for the Legislature to amend the law from time to time and as necessity arises.

Conclusions

Your petitioners respectfully demand that:

- 1.—If any legislation on alcoholic beverages is to be approved, the provisions of law 115 above transcribed should be reenacted;
- 2.—If this should not be possible, then, the provisions of Law No. 6 above transcribed should not be altered or amended;
- 3.—These last provisions should be effective permanently.

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We respectfully submit the above facts to your consideration, and ask your cooperation to foster a native industry of Puerto Rico. By so doing you will aid in the welfare of Puerto Rico and stop certain foreign interests from exploiting the Island for their own personal gain.

Respectfully,

VICENTE TELLADO, SUCRS.

By Vicente Tellado.

BARCELO & CO., S. EN C.

J. R. NIEVES & CIA.

By Mig. Rovira.

RONRICO COPORATION

D. I. Hulsman, Secretary-
Treasurer

DESTILERIA TROPICAL

By Andres Barcelo.

VIGO ISERN & CIA.

By Jose Vigo.

DESTILERIA SERRALLES, INC.

By F. R. Hilera.

EDMUNDO B. FERNANDEZ

J. M. PORTELA & Co.

ROSES & Co., INC.

By F. Oliver, Vice president.

LICORERIA BORINQUEN

A. Yumet.

I. TORRUELLA & Co.

Jose Blay, Member of the firm.

SUCRS. DE JOSE FERNANDEZ

R. VEGA E HIJOS, INC.

By Manuel Vega, Treasurer.

R. G. LAGO & Co.

PUERTO RICO DISTILLING CO.

By L. Oliver, Pres. & Gen. Mgr.

LICORERIA MARIN, INC.

Jose M. Marin, Vicepresident.

M. P. GRAU

JOSE GONZALEZ CLEMENTE & Co.

THE GIOCONDA, INC.

LICORERIA "LA BODEGA",

Monllor & Boscio, Sucrs., S. en C., pp. J. A. Comulada, Jr.

UBIDES & Co.

J. Ubides.

NICOLAS FIGUEROLA

EDUARDO R. GONZALEZ, INC.

By Gabriel de la Haba.

San Juan, Puerto Rico, February, 1937.

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(1) For the May 5, 1936, issue of "El Mundo", Hon. Rafael Martinez Nadal, President of the Senate, authorized the following statement regarding Law No. 115.

"Because at first-sight and without having had time to make a legal study of the same, I have very serious doubts regarding the constitutionality of several of its provisions. It establishes an unsurmountable barrier against the locating in the country of similar industries of universal reputation and prohibits the use of such a name on the package or label of the product. It is alleged in support thereof that any similar industry of recognized world reputation would injure Puerto Rican producers."

(2) Article 1, section 8.

"The Congress shall have Power To regulate Com-

merce with foreign Nations, and among the several States, and with the Indian Tribes. . . .

(3) Fourteenth Amendment, section 1:

"No State shall make or enforce any law which shall. . . . deny, to any person within its jurisdiction the equal protection of the laws."

(4) Amendment XXI.

Section 1.—The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2.—The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

APPENDIX

SUPREME COURT OF THE UNITED STATES

No. 22—October Term, 1936.

State Board of Equalization of California, et al., appellants,
vs.

Young's Market Company, et al.,

Appeal from the District Court of the United States for the Southern District of California.

(November 9, 1936)

Mr. Justice Brandeis delivered the opinion of the Court.

This suit, brought in the federal court for southern California, challenges the validity, under the Twenty-first Amendment of the Federal Constitution of the provisions of a Statute of that State, and of the regulations thereunder, which impose a license-fee of \$500 for the privilege of importing beer to any place within its borders. The license does not confer the privilege of selling. Compare *Premier-Pabst Sales Co. v. Grosscup*, 298 U. S.—

The plaintiffs are domestic corporations and individual citizens of California who sue on behalf of themselves and of others simi-

larly situated. Each is engaged in selling at wholesale at one or more places of business within the State beer imported from Missouri or Wisconsin; and has a wholesaler's license which entitles the holder to sell there to licensed dealers beer lawfully possessed, whether it be imported or is of domestic make. For that license the fee is \$50. Each plaintiff has refused to apply for an importer's license, claiming that the requirement discriminates against wholesalers of imported beer; and that, hence, the statute violates both the commerce clause and the equal protection clause. The bill alleges that heavy penalties are exacted for importing, or having in possession, imported beer without having secured an importer's license; that unless enjoined defendants will enforce the statute; that enforcement would subject each of the plaintiffs to irreparable injury; and that the matter in controversy exceeds \$3000.

The several state officials charged with the duty of enforcing the statute, were joined as defendants, and made return to an order to show cause. They assert that the challenged statutory provisions and regulations are valid because of the Twenty-first Amendment, ratified December 5, 1933, which provides, by Section 2:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

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First.—The main contention of the plaintiffs is that the exaction of the importer's license fee violates the commerce clause by discriminating against the wholesaler of imported beer. But there is no discrimination against them *qua* wholesalers. Everyone holding a wholesaler's license who is lawfully possessed of any beer, may sell it. The fee exacted for the privilege of selling, and the condition under which a sale may be made, are the same whether the beer to be sold is imported or domestic, or is both. The difference in position charged as a discrimination is not in the terms under which beer may be sold. It arises from the fact that no one

may import beer without securing a license therefor. What the plaintiffs complain of is the refusal to let them import beer without paying for the privilege of importation. Prior to the Twenty-first Amendment it would obviously have been unconstitutional to have imposed any fee for that privilege. The imposition would have been void, not because it resulted in discrimination, but because the fee would be a direct burden on interstate commerce; and the commerce clause confers the right to import merchandise free into any state, except as Congress may otherwise provide. The exaction of a fee for the privilege of importation would not, before the Twenty-first Amendment, have been permissible even if the State had exacted an equal fee for the privilege of transporting domestic beer from its place of manufacture to the wholesaler's place of business. Compare *Case of the State Freight Tax*, 15 Wall 232, 274, 277. Thus, the case does not present a question of discrimination prohibited by the commerce clause.

The amendment which "prohibited" the "transportation or importation" of intoxicating liquors into any state "in violation of the laws thereof", abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes. The plaintiffs ask us to limit this broad command. They request us to construe the Amendment as saying, in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a rewriting of it.

The plaintiffs argue that, despite the Amendment, a state may not regulate importations except for the purpose of protecting the public health, safety or morals; and that the importer's license fee was not imposed to that end. Surely the State may adopt a lesser degree of regulation than total prohibition. Can it be doubted that a state might establish a state monopoly of the

manufacture and sale of beer, and either prohibit all competing importations, or discourage importation by laying a heavy impost, or channelize desired importations by confining them to a single consignee? Compare *Slaughter House Cases*, 16 Wall. 36; *Vance v. W. A. Vandercook Co.*, (No. 1). 170 U. S. 438, 447. There is no basis for holding that it may prohibit, or so limit, importation only if it establishes monopoly of the liquor trade. It might permit the manufacture and sale of beer, while prohibiting absolutely hard liquors. If it may permit the domestic manufacture of beer and exclude all made without the State, may it not, instead

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of absolute exclusion, subject the foreign article to a heavy importation fee? Moreover, in the light of history, we cannot say that the exaction of a high license fee for importation may not, like the imposition of the high license fees exacted for the privilege of selling at retail, serve as an aid in policing the liquor traffic. Compare *Phillips v. City of Mobile*, 208 U. S. 472, 479.

The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed Amendment. As we think the language of the Amendment is clear, we do not discuss these matters. The plaintiffs insist that to sustain the exaction of the importer's license-fee would involve a declaration that the Amendment has, in respect to liquor, freed the states from all restrictions upon the police power to be found in other provisions of the Constitution. The question for decision requires no such generalization.

Second.—The claim that the statutory provisions and the regulation are void under the equal protection clause may be briefly disposed of. A classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth. Moreover, the classification in taxation made by California rests on conditions requiring difference in treatment. Beer sold within the State comes from two sources. The brewer of the domestic article may be required to pay a license-fee for the privilege of manufac-

turing it; and under the California statute is obliged to pay \$750 a year. Compare *Brown-Forman Co. v. Kentucky*, 217 U. S. 563. The brewer of the foreign article cannot be so taxed; only the importer can be reached. He is subjected to a license-fee of \$500. Compare *Kidd v. Alabama*, 188 U. S. U. S. 730, 732.

Reversed.

(Italics ours.)

JOURNAL ENTRY.

[Filed August 11, 1937.]

The hearing on the rule issued to Rafael Sancho Bonet, Treasurer of Puerto Rico to show cause why the petition of Bacardi Corporation of America for preliminary injunction should not be granted, resumed.

All interested parties are present and represented by their attorneys.

The court hears testimony in behalf of the defendant, the argument of counsel and further argument continued until Thursday, August 12, 1937, at 9:30 A.M.

Prior to argument after close of testimony, counsel for plaintiff moved to amend the complaint as follows, to wit:

That on the first line on page 3 of the complaint the date May 2, 1936, be amended to read "May 2, 1933". In second line on page 4, where it says "May 25, 1935" referring to the plaintiff it should read "November 23, 1935"; on line 12 of page 4, after the word "Amended" referring to the Federal permit, insert the words "on March 28, 1936". On page 18 just before the words "the plaintiff has no plan, complete and adequate remedy at law", to insert the allegation "that Section 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that section is not mentioned in the title of the Act."

No objections being made to the amendments proposed, the court allows same and the allegations as amended be considered as specifically denied by defendant in its answer.

JOURNAL ENTRY.

[January 17, 1938.]

This case is called for trial, all parties answer "ready". Plaintiff is represented by D. F. Kelley and Rafael O. Fernandez, Esquires; defendant appears by J. A. Gonzalez, Esq., Assistant Attorney General; Jaime Sifre, Esq., appears for intervenor Destileria Serralles, Inc., and Miguel Guerta, Esq., for intervenor P. R. Distilling Co.

Upon motion of D. F. Kelley, Esq., the name of Jerome L. Isaacs, Esq., is entered as an attorney in this court and also as one of the attorneys for complainant.

Attorney for plaintiff moves that certain amendments be made in the bill of complaint, which motion is granted, the amendments being the following:

On page 3, second line, instead of "May 2, 1936" it should read: "May 2, 1933".

On page 4, second line, change "May 25, 1935" to "November 23, 1935".

On page 4, line 12, insert after word "amended" the date "March 28, 1936".

On page 18, line 8, after "Fourth and Fifth Amendments to the Constitution of the United States" add "and the Commerce Clause thereof, Article 1, Section 8, Clause 3".

Attorney for plaintiff also moves to strike certain parts of paragraph 5 of answers of intervenors, which motion is not passed upon at this time.

Intervenor, Destileria Serralles, Inc., moves to amend its answer which motion is granted as follows:

On page 16, paragraph 17, line 5, after semicolon insert "or the Commerce Clause, Art. 1, Sec. 8, Clause 3 of the Constitution".

Thereupon, part of testimony in behalf of plaintiff heard and further trial continued to January 18, 1938.

MOTION TO DISMISS.

[Filed August 9, 1937.]

Now comes the defendant, the Treasurer of Puerto Rico, through his undersigned attorneys, and respectfully alleges as follows:

That the bill of complaint herein does not state facts sufficient to constitute a cause of action against the defendant.

Wherefore it is hereby respectfully prayed that the same be dismissed with such other further relief as the court may deem proper.

San Juan, Puerto Rico, August 9, 1937.

B. FERNANDEZ GARCIA,

Attorney General of Puerto Rico.

JESUS A. GONZALEZ,

Assistant Attorney General.

MANUEL CRUZ HORTA,

Special Legal Adviser, Treasury Department.

Served with copy this ninth day of August, 1937.

HARTZELL, KELLEY & HARTZELL,

by DANIEL F. KELLEY,

Attorney for Plaintiff.

ANSWER TO THE BILL OF COMPLAINT.

[Filed August 9, 1937.]

Now comes the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, through his undersigned attorneys, and answering to the bill of complaint herein, respectfully alleges and prays as follows:

I. Defendant accepts the allegations contained in the first two unnumbered paragraphs of the bill of complaint, with the exception of that part thereof in which it is alleged that complainant is a Pennsylvania corporation and a citizen of that state, of which facts defendant lacks knowledge or information sufficient to admit

or otherwise contradict them, for which reason defendant denies them and demands strict proof thereof.

II. Defendant lacks knowledge or information sufficient to admit or otherwise contradict the allegations contained in paragraph (1), (2) and (3), of the bill of complaint, and therefore denies them and demands strict proof thereof, except that defendant admits that a certain rum under the name of "Bacardi" is sold in Cuba and elsewhere throughout the world, including the United States and Puerto Rico, and that the producers of such rum are considered by a part of the general buying public as possessing a good reputation as producing a rum of high quality which is sold under trade-marks and labels bearing the name of "Bacardi".

III. Defendant admits that the trade-marks mentioned in paragraph (4) of the bill of complaint were caused to be registered by the Cuban company in the United States Patent Office, but not having sufficient knowledge or information upon which to deny or admit the allegation that the said registrations are based upon corresponding Cuban registrations and are authorized by the Convention in effect between the United States and Cuba and by the Act of Congress approved February 20, 1905 (U. S. Stat. at Large 46, part II, p. 2907; U. S. C., Title XV, Section 8194), defendant denies it and demands strict proof thereof; also defendant

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admits that the said registrations are valid and Plaintiff's Exhibit Bacardi Registration attached to the bill represents a photo-static copy of the said trade-marks, but denies, for lack of sufficient knowledge or information to contradict or admit, the allegation to the effect that such registrations are still subsisting; also defendant admits that the following trade-marks:

No. 3916 — Bacardi;

No. 3917 — Bat trade-mark;

No. 3918 — Ron Bacardi, Superior Carta de Oro;

No. 3919 — Ron Bacardi, Superior Carta Blanca,

were registered in the office of the Executive Secretary of Puerto

Rico according to the laws of this Island on or about April 10, 1935.

IV. Answering the allegations contained in paragraph (5) of the bill of complaint, the defendant, for lack of information or belief to admit or otherwise contradict, denies the same and demands strict proof thereof.

V. Defendant lacks knowledge or belief sufficient to admit or otherwise contradict the allegations of plaintiff made under paragraph (6) of the bill of complaint, for which reason said allegations are hereby denied and strict proof thereof demanded.

Again, defendant admits that the label proposed to be used by plaintiff in Puerto Rico, as alleged in the bill of complaint, for its products, was approved by the Federal Alcohol Administration pursuant to the Federal Alcohol Administration Act of August 29, 1935, as exhibited by Plaintiff's Exhibit Approval of Label attached to the bill of complaint.

VI. Defendant admits that the Executive Secretary of Puerto Rico, on May 31, 1936, issued a certificate of registration as a foreign corporation in favor of plaintiff and that the Treasurer of Puerto Rico, on April 6, 1936, issued a license to the plaintiff to do business in Puerto Rico and that the said license has been renewed from year to year and is still in force, all fees under the laws of Puerto Rico in connection therewith having been paid by plaintiff. Defendant also admits that the Treasurer of Puerto

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Rico issued permits for distilling, rectifying and warehousing alcohol on July 20, 1936, in favor of the plaintiff.

However, the defendant is without knowledge or belief on which to admit or otherwise contradict, and therefore denies and demands strict proof thereof, the fact that on March 6, 1936, plaintiff entered into an agreement for the rental (with option of purchase) of a five-story building owned by the Puerto Rican American Tobacco Company situated on Marina Street, San Juan, for a period of three years, at a rental of \$9,600 a year, and that

plaintiff brought from Cuba and Pennsylvania the necessary equipment and materials for the development of its said alleged business. Defendant also denies, for lack of sufficient knowledge and information to admit or otherwise contradict, that plaintiff installed in the said building, in the city of San Juan, Puerto Rico, a rectifying plant at an expense of approximately 600,000 dollars, of which more or less 45,000 dollars was expended between April 6 and May 15, 1936. Defendant admits that the photographs attached to the bill of complaint, marked "Plaintiff's Exhibit Photographs of Plaintiff's Plant" represent the building at which plaintiff alleges to have installed its said business.

As regards plaintiff's allegation under paragraph (7) of the bill, to the effect that it has produced and accumulated in Puerto Rico a large stock of properly matured rum which it is now ready to bottle, label and sell, and is prepared to do so, and made commitments to its customers for sale to them of such products under the name of "Bacardi" and of the various trade-marks mentioned in the bill of complaint, and that plaintiff will be prevented from closing the said sales and delivering the said products to the purchasers on account of the reasons alleged in the bill of complaint solely, defendant denies such allegation and demands strict proof thereof for lack of sufficient knowledge and information to admit or otherwise contradict said allegation.

VII. Defendant admits all the allegations of fact contained in allegation (8) of the bill of complaint with regard to the approval of Act No. 115 of 1936 by the Legislature of Puerto Rico, but

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denies for lack of sufficient knowledge or information to believe or otherwise contradict, that plaintiff duly complied with the provisions of said Act, and also that plaintiff did not bottle any rum whatsoever, or use any label containing any brand, trade name, or trade-mark in contravention of said Law No. 115 of 1936, as alleged in paragraph (8) of the bill of complaint, and therefore defendant demands strict proof thereof.

VIII. Defendant admits the allegations made under paragraph (9) of the bill of complaint, with the exception that during the period since Act No. 6 took effect any stock of any high grade rum which plaintiff alleges was in process of maturing for marketing under the regular Bacardi rum labels, trade-marks and brands which plaintiff alleges is authorized by the Cuban company to use, and which are registered in the United States Patent Office as well as in the Office of the Executive Secretary of Puerto Rico, was in process of maturing for marketing under the name of "Bacardi" as set forth in the last paragraph of allegation (9) of the bill of complaint.

IX. Defendant admits allegation (10) of the bill of complaint.

X. Defendant denies that the Acts of the Legislature of Puerto Rico mentioned in paragraphs (8), (9) and (10) of the bill of complaint contain arbitrary, capricious and unreasonable restrictions, discriminations and prohibitions directed solely at the plaintiff, or directed against any other person, engaged in the liquor traffic in Puerto Rico. Defendant also denies that an attempt was made in Act No. 115 of the Legislature of Puerto Rico of the year 1937 for the purpose of preventing the plaintiff, and the plaintiff only, from using its regular registered trade-marks or labels in Puerto Rico.

Defendant further denies that in approving Act No. 6 of 1936, or any other act, the Legislature of Puerto Rico has exhibited any attempt whatsoever at specific sole discrimination, or any other kind of discrimination, against plaintiff or any other person, legal

or natural, within the jurisdiction of the government of Puerto Rico in the exercise of its power to regulate and control the traffic within its territorial limits of alcoholic liquors within the provisions of the Twenty-first Amendment to the Constitution of the United States, or to prevent plaintiff from in any way benefiting from the value and good will incident to the lawful use of its Bacardi name and trade-marks, or to do any lawful business within the Island of Puerto Rico.

With reference to the last paragraph of allegation (11) made by plaintiff on a certain Memorial which plaintiff alleges was addressed to the Legislature of Puerto Rico some time during the month of February, 1937, which defendant denies was received by the Legislature of Puerto Rico for lack of sufficient knowledge or information on which to accept or otherwise contradict, defendant now alleges that notwithstanding the feebleness and immateriality of the said allegation to the cause of action exercised by plaintiff in his bill of complaint, the Legislature of Puerto Rico, in approving the said Act No. 6 and Act No. 149, amendatory thereto, acted within the provisions of the Organic Act of Puerto Rico and the Twenty-first Amendment to the Constitution of the United States, and in no way contravenes any legislation of the Congress of the United States of America paramount to the legislative powers invested in the civil government of Puerto Rico established by the Organic Act approved on the second day of March, 1917, as amended.

To the contrary defendant alleges, upon information and belief, that the Memorial to which reference is made in the said paragraph of the bill of complaint reflects a partial view of the situation presented by plaintiff in his bill of complaint and that the influence of such Memorial on the final decision of the Legislature of Puerto Rico is very doubtful.

XI. Defendant denies that the regulations and limitations upon labels with regard to the contents shown in said labels, sizes of lettering thereon, and other details alleged in the bill of complaint, as provided for by Section 2 of the 1937 Law amending Section 40 of Act No. 6, approved June 30, 1936, and providing for regulations thereunder by the Treasurer of Puerto Rico, are

inconsistent with similar regulations of the Federal Alcohol Administration Act and regulations thereunder; also defendant denies that the said provisions of the Federal Alcohol Administration Act, as amended, are paramount and mandatory in Puerto Rico, which fact defendant also considers as a conclusion of law.

Defendant further denies, for lack of sufficient knowledge or information to admit or otherwise contradict, that Section 2 of Act No. 6, approved June 30, 1936, purports to regulate or provide means of regulation of the labels of the plaintiff coming within Federal licenses granted to it by the Federal Government and within the approval of the Federal Alcohol Administration granted to plaintiff in connection with the labels referred to in the bill.

Defendant also denies, for the reason that it is a conclusion of law, the allegation in paragraph (12) (a) of the bill of complaint, which conclusion is not founded on the facts as presented by the bill. The fact that Section 2 of Act No. 139, manifestly discriminates against the plaintiff in that it requires the brand name to be three times the size of the name of the manufacturer, as well as the fact that the plaintiff's brand name "Bacardi" is the one which plaintiff is authorized to use in the United States and in Puerto Rico, is also denied for lack of sufficient knowledge or information to admit or otherwise contradict.

Defendant also denies that the purpose of Section 44 (b) of Act No. 6 of 1936, limiting the capacity of containers for exportation purposes to one gallon is to prevent plaintiff from exporting its products in bulk from Puerto Rico, or from using any labels or trade-marks which it may use on the products which it manufactures and bottles in this Island, or elsewhere. Defendant denies that this provision of law is unconstitutional and void for the reason that it contravenes the Federal Alcohol Administration Act and violates the Commerce Clause and the Fourteenth Amendment to the Constitution of the United States and the due process of law clause of the Organic Act of Puerto Rico. To the contrary defendant alleges that said Section 44 (b) of Law No. 6 of the

year 1936, approved by the Legislature of Puerto Rico, is constitutional and valid, and represents a lawful exercise of the police power granted to the Legislature of Puerto Rico by the Organic Act, or at least, a lawful exercise of the general legislative powers

granted to the Legislature of Puerto Rico to control, regulate and license industrial and commercial enterprises in Puerto Rico on such lines as would protect, promote and stabilize the welfare and the financial good standing of this community, and the protection of the public in general.

Defendant further denies that the provisions of Section 5 of Act No. 149 of 1937, amending Section 97 of Act No. 6 of 1936, delegate the authority of the Treasurer of Puerto Rico as an administrative officer charged with the administration of the Revenue Laws of the Island (specially with the enforcement of the liquor laws involved in this case) on private persons, thus subjecting plaintiff to a multiplicity of suits.

Defendant also denies that the above-mentioned section of Act No. 6, as amended by Section 5 of Act No. 149, of 1937, or either of them, deprives the courts of discretion to protect litigants who come before them seeking justice. Again, defendant denies the contingency alleged by plaintiff in the said paragraph of the bill of complaint, that numerous and vexatious suits will be filed against plaintiff in connection with this controversy with the sole purpose of destroying plaintiff's business in Puerto Rico without complying with the requisites of posting bonds in amounts sufficient to secure the plaintiff against the damages which it may suffer from said suits.

Defendant further alleges that Section 3 of Act No. 149 of 1936, to which reference is made in paragraph (d) of allegation (12) of the bill of complaint, was enacted for the specific purpose of preventing plaintiff, or anyone else, from doing business in Puerto Rico, and to cure any defects or oversights in the acts assailed on the ground of unconstitutionality by plaintiff in this bill of complaint. Also defendant denies that under Section 3 of the said law plaintiff be denied of his rights under the trade-marks and good will alleged in the bill of complaint to an extent greater

tiff alleges, failed to take from it every remaining vestige of property rights.

Defendant specifically denies that the effect of Section 3 and Section 7 of said Act No. 149 cure any defect in the designation of the source of plaintiff's products, or the products of any other rum producer in Puerto Rico, and also that the provisions of Sections 3 and 7 of said Act No. 149 be applicable solely to plaintiff. Further, defendant denies, for lack of sufficient knowledge or information to accept or otherwise contradict, that subsequent to the approval of Section 3 of Act No. 149, aforementioned, a certain foreign entity, other than plaintiff, could not in fact qualify and continue in business under said section in Puerto Rico for the reasons alleged in the bill of complaint, and that this entity differ from the plaintiff in that its manufacture has been confined to Continental United States and its trade-mark has been used only in Continental United States prior to February 1, 1936, whereas plaintiff's trade-marks have been used in Continental United States and in the Republic of Cuba, and elsewhere, for which reason Sections 3 and 7 of Act No. 149, combined, are completely discriminatory against the plaintiff and applicable to no one else.

Defendant also denies that the said sections of the law deprive plaintiff of property without due process of law by preventing it from using its name and trade-marks, and benefit thereby, in Puerto Rico.

XII. For lack of sufficient knowledge or information to deny or otherwise contradict the allegations contained in paragraph (13) of the bill of complaint, defendant denies them, and expressly and specifically denies that Act No. 149, of 1937, deprives plaintiff of its right to use its alleged trade-marks or any other rights under the Convention referred to in the bill of complaint, or under the Act of Congress dated February 20, 1905; and defendant further denies that the Act of the Legislature of Puerto Rico

of Cuba signed on February 20, 1929, as alleged in the said paragraph of the bill of complaint, and that it frustrates the intent of the said Convention and might provoke retaliatory actions against American citizens by other countries signatories to that Convention.

XIII. Defendant lacks sufficient knowledge or information on which to deny or otherwise contradict the allegations of paragraph (14) of the bill, and, consequently, denies them and demands strict proof thereof.

XIV. Defendant admits that he is the Treasurer of Puerto Rico and is charged, in said capacity, with the execution of the Revenue Laws of Puerto Rico, including Act No. 149, and the Act which it purports to amend, but denies that the said Acts or any other act coming within his jurisdiction is void and unconstitutional; and also denies that the said acts themselves and the execution thereof, will irreparably damage plaintiff.

XV. Defendant is without knowledge or information sufficient to admit or deny the allegations of fact contained in paragraph (16) of the bill and, consequently, denies them and demands strict proof thereof.

XVI. Defendant specifically and expressly denies that Sections 2, 3, 4, 5 and 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936, as any of the aforesaid sections purports to amend, are unconstitutional and void for the reasons set forth under paragraph numbers 1, 2, 3 and 4 of the second paragraph of the said allegation (17) of the bill of complaint, and to the contrary defendant alleges that said provisions of law are constitutional and valid and constitute a lawful exercise of the powers granted by the Organic Act of Puerto Rico and the Twenty-first Amendment to the Constitution of the United States to the Legislature of Puerto Rico.

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Defendant further denies that Section 44 of Act No. 6 of 1936 is void because of the reason that the subject-matter of said section is not embraced in the title thereof, and to the contrary defendant

alleges that said section is valid and is comprehended in the title of the said Act No. 6 of 1936.

Defendant also denies that plaintiff has no plain, complete and adequate remedy at law, and to the contrary expressly and specifically alleges that plaintiff has an adequate, rapid and complete remedy at law provided for by the laws of Puerto Rico governing the payment of taxes under protest, proceedings for a declaratory judgment, and actions for damages in case of illegal action from governmental officials in the enforcement of an unconstitutional statute, all of which actions are amply protected under the laws of this jurisdiction.

SPECIAL DEFENSES.

1. For a first, further, separate and distinct defense, defendant alleges that plaintiff herein is estopped from challenging the validity of Act No. 6 of the Legislature of Puerto Rico, approved June 30, 1936, as amended, for the following reasons, to wit:

(a) It appears from paragraph (7) of the bill of complaint that plaintiff herein received from defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol.

(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted him thereunder and from the effects of the said Act insofar as it provided regulation and control of the liquor traffic by the Government of Puerto Rico up to the present time without even raising any objection to the legality or validity of the said Act.

2. For a second, further, separate and distinct defense in point of law arising from the face of the bill of complaint, defendant

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alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint are a valid exercise of the police power and of the general legislative powers granted to the Legislative Assembly of Puerto Rico by the Organic Act and

by the Twenty-first Amendment to the Constitution of the United States.

3. For a third, further, separate and distinct defense in point of law arising from the face of the bill of complaint, defendant alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint constitute necessary enactments for the control and regulation of the liquor traffic within the powers of the Legislative Assembly of Puerto Rico, and specially of the rum industry, and are not a burden on interstate commerce, nor do they constitute a denial of the equal protection of the laws.

4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, defendant says that the facts alleged in said bill of complaint are insufficient to constitute a valid cause of action in equity.

Wherefore, it is hereby prayed that the plaintiff's bill may be dismissed with costs.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

JESUS A. GONZALEZ,
Assistant Attorney General.

MANUEL CRUZ HORTA,
*Special Legal Adviser of the
Treasurer of Puerto Rico.*

Copy received, San Juan, P. R., August 9, 1937.

HARTZELL, KELLEY & HARTZELL,
by DANIEL F. KELLEY,
Attorneys for Plaintiff.

PETITION IN INTERVENTION.

[Filed August 9, 1937.]

To the Honorable ROBERT A. COOPER, Judge of the District Court of the United States for the District of Puerto Rico:

Now comes petitioner, Destileria Serralles, Inc., and respectfully represents and shows as follows:

Transcript of Record of District Court.

1. That the petitioner is a corporation organized under the laws of Puerto Rico, doing business in the Island, with its principal office in the municipal jurisdiction of Ponce, Puerto Rico, and is the owner therein of a distillery devoted to the manufacture of distilled spirits.

2. That the petitioner herein is the holder of permits to engage in the distillation, warehousing and rectifying of distilled spirits (rum) issued and granted by the Treasurer of Puerto Rico, and that petitioner having complied with all the regulations of the Federal Alcohol Administration, obtained from its permits to distill, rectify and warehouse and bottle distilled spirits (rum) in Puerto Rico, and is operating under said permits and manufacturing in the Island of Puerto Rico and selling in the Island and elsewhere, including Continental United States, a rum known as "Don Q".

3. That Bacardi Corporation of America filed a bill of complaint in equity praying that this court declare that certain sections of Act 149 approved by the Legislature of Puerto Rico on May 15, 1937, mentioned in the said bill of complaint, and each of them are unconstitutional and void, and also praying:

"That the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, and all others having authority to enforce said Act and each of them and all persons acting in concert with them or by, through or under them and all holders of permits under Act No. 149 of May 15, 1937 and laws amended thereby, be enjoined, at first during the pendency of this suit and afterward perpetually from enforcing or attempting to enforce against this plaintiff the provisions of Sections 2, 3 and 4 and 5 (insofar as Section 4 adds sub-section (b) to Section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend."

4. That it is also prayed in the said bill of complaint, as follows:
"That the court issue an order directed to the defendant to show cause, if any he has, at such time as court may think

proper, why a preliminary injunction should not issue in this case."

5. Your petitioner further alleges that it is directly interested in the above entitled cause and that it would be affected by the decree sought by the complainant, as Bacardi Corporation of America, plaintiff, seeks to enjoin not only the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, but also all permit holders under Act No. 149 of May 15, 1937 and laws amended thereby, and that the petitioner is one of said permit holders.

6. Petitioner alleges that the provisions contained in sub-section (b) of Section 9th of Act 6, approved on June 30, 1936, as amended by Section 5 of Act 149 of May 15, 1937, read as follows:

"(b) Any holder of a permit obtained under the provisions of this Act or of any other act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violation of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty Thousand (30,000) Dollars."

The above quoted provisions give to this petitioner as a permit holder, the right to appeal to court to demand protection against violations of the Act on the part of other persons, and such provisions are attacked by plaintiff in the bill of complaint filed in this cause, and the decree sought by plaintiff would deprive this petitioner and all other permit holders of the right granted to all permit holders by the said provisions of the Act.

7. Your petitioner further alleges that because of the reasons set forth above any temporary or final injunction would materially affect the interests of this petitioner, for which reason this petitioner is entitled to intervene and be heard.

8. That this petitioner, if permitted to intervene, is prepared to make its defense without delay to said complainant's cause and is prepared to and will, on the amount being fixed, pay or secure in all

Transcript of Record of District Court.

things, as this Honorable Court may order, such costs as may accrue and be chargeable to its defense.

Wherefore your petitioner asks leave of the court to be permitted to intervene in this cause and to become a defendant in the same and to be permitted to defend in this cause by its solicitors as a party defendant, with full and complete rights of defense.

Respectfully submitted,

DESTILERIA SERRALLES, INC.,
by ANTONIO J. MATTA,
J. SIFRE, Jr.

San Juan, P. R., August 7, 1937.

UNITED STATES OF AMERICA.

DISTRICT OF PUERTO RICO,

CITY OF SAN JUAN, ss.

Felix Hilera being first duly sworn upon his oath deposes and says that he is the general manager of Destileria Serralles, Inc., petitioner in the foregoing petition in intervention; that he has read said petition and knows the contents thereof and that the same are true to the best of his knowledge, information and belief, and that this verification is made by deponent and not by the petitioner for the reason that the petitioner is a corporation and deponent is familiar with the allegations in the above petition.

F. HILERA.

Subscribed and sworn to before me by Felix Hilera, of age, married, resident of Ponce, Puerto Rico, to me personally known, this seventh day of August, 1937, at San Juan, P. R.

LULU G. DONOHUE, Clerk.

ORDER.

[Filed August 7, 1937.]

A motion for leave to intervene having been filed by Destileria Serralles, Inc., stating that it has an interest in the matter being litigated in this case and that it is a necessary and proper party to

a complete determination of the cause, which motion for leave to intervene is accompanied by a petition in intervention, and praying for an order that service of a copy of the said intervening petition upon the parties hereto may be made by delivering a copy to their solicitors, and for a rule directing the parties hereto to show cause on Monday, the ninth day of August, 1937, at nine A.M. or at any other time that this court may determine and decide why the said petitioner should not be allowed to intervene.

Now therefore, it is hereby ordered that service of a copy of the intervening petition upon the parties hereto may be made by delivering a copy to their solicitors, and further that the parties hereto show cause on Monday the ninth day of August, 1937, at 9:30 A.M., why the petitioner, Destileria Serralles, Inc. should not be allowed to intervene in this case and to become a defendant in the same.

San Juan, Puerto Rico, August 7, 1937.

ROBT. A. COOPER,

*Judge of the United States District Court
for the District of Puerto Rico.*

ANSWER OF DESTILERIA SERRALLES, INC., INTERVENER.

[Filed August 9, 1937.]

Now comes Destileria Serralles, Inc., hereinafter referred to as "the intervenor", and by leave of court files its intervention in the above entitled cause, and for its separate answer to plaintiff's bill of complaint alleges and states as follows:

1. Intervenor is a corporation duly organized under and by virtue of the laws of Puerto Rico, and is a citizen thereof.
2. Plaintiff, Bacardi Corporation of America, purports to be a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania.
3. Defendant, Rafael Sancho Bonet, is and was at all times hereinafter mentioned in the bill of complaint and herein, the Treasurer of Puerto Rico, a citizen of the United States of America,

and charged under the laws of the Island of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico.

4. Intervenor has an interest in the matter being litigated in this case and would be injured and damaged by the unenforcement of the sections of the Alcoholic Beverage Laws of the Island attacked and assailed by plaintiff.

5. Intervenor is the holder of permits to engage in the distillation, warehousing and rectifying of distilled spirits (rum) issued and granted by the Treasurer of Puerto Rico, and having complied with all the regulations of the Federal Alcohol Administration, intervenor obtained from it permits to distill, rectify and warehouse and bottle distilled spirits in Puerto Rico, and is operating under said permits and manufacturing in the Island of Puerto Rico and selling in the Island and elsewhere, including Continental United States, a rum known as "Don Q".

6. Intervenor is and has been the owner of a distillery and of a plant for rectifying rum situated in the municipal jurisdiction of Ponce, in the Island of Puerto Rico, and that in the said plant and in the said distillery intervenor herein has invested large and substantial sums of money.

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FIRST. Intervenor is without knowledge as to the allegations contained in paragraph 1 of the bill of complaint, except that intervenor admits that Compania Ron Bacardi, S. A., a Cuban corporation, conducts the business of the production of alcoholic liquors, particularly rum sold under registered trade-marks including the word Bacardi and Bacardi y Cia, the representation of a bat in a circular frame, and certain distinctive labels. Intervenor further alleges that the said rum has been sold and is sold in Puerto Rico.

SECOND. Intervenor is without knowledge as to the allegations contained in paragraph 2 of the bill of complaint and therefore demands strict proof thereof, except that it admits that rum Bacardi was sold in the United States before national prohibition and also in Puerto Rico, and except that it admits that during

national prohibition rum under the name "Bacardi" was continued to be produced and sold in Cuba and elsewhere, and that after the repeal of prohibition sales of Bacardi were made in the United States and in Puerto Rico and have since continued.

THIRD. Intervenor is without knowledge as to the allegations contained in paragraph 3 of the bill of complaint to the effect that Bacardi rum is and always has been made according to definite processes and methods and therefore demands strict proof thereof. It admits that the Cuban producers of the rum known in the market as "Bacardi" possess property rights in the said name and in such trade-marks and distinctive labels which may be owned by the Cuban producers of the said rum Bacardi.

FOURTH. Intervenor is without knowledge as to the allegations made in paragraph 4 of the bill of complaint and therefore demands strict proof thereof, except that intervenor admits that the Cuban company caused the trade-marks mentioned in the said paragraph of the bill of complaint to be registered in the United States Patent Office, and that said trade-marks of the Cuban Company are subsisting, and except that it admits that the trade-marks alleged in the said paragraph to have been registered in the Executive Secretary's office of Puerto Rico were so registered.

FIFTH. As to paragraph 5 of the bill of complaint, intervenor is without knowledge and therefore demands strict proof thereof. And intervenor further alleges and avers, upon information and belief, that plaintiff cannot devote itself in the State of Pennsyl-

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vania, to the pursuits or objects or to any of the pursuits or objects, mentioned and enumerated in the said paragraph of the bill of complaint.

SIXTH. As to the matters alleged in paragraph 6 of the bill of complaint, intervenor is without knowledge and therefore demands strict proof thereof, except that intervenor admits that a photo-static copy is attached to the bill of complaint, which photo-static copy among other things, shows that the label therein mentioned has been approved.

SEVENTH. As to the matters alleged in paragraph 7 of the bill

of complaint, intervenor is without knowledge and therefore demands strict proof thereof, except that it admits that plaintiff was licensed to do business in Puerto Rico and that it received from the Executive Secretary of Puerto Rico a certificate of registration as a foreign corporation in Puerto Rico, and that plaintiff also received permits from the Treasurer of Puerto Rico in July, 1936, for distilling, rectifying and warehousing alcohol.

Further answering the allegations contained in said paragraph 7 of the bill of complaint this intervenor alleges that the permits obtained by plaintiff from the Treasurer of Puerto Rico for distilling, rectifying and warehousing alcohol were issued by the Treasurer at the request of the plaintiff, and that plaintiff has enjoyed the benefits of said permits.

EIGHTH. Answering the allegations contained in paragraph 8 of the bill of complaint this intervenor admits all of the allegations thereof except that it is without knowledge as to the allegations contained in the last paragraph of said paragraph 8 and therefore demands strict proof thereof.

NINTH. Answering the allegations contained in paragraph 9 of the bill of complaint intervenor admits each and every allegation thereof except that it is without knowledge as to the allegations contained in the last two paragraphs of said paragraph 9 of the bill of complaint and therefore demands strict proof as to each and all of the allegations contained in the said paragraph.

TENTH. Intervenor admits all of the allegations contained in paragraph 10 of the bill of complaint.

ELEVENTH. Answering the allegations contained in paragraph 11 of the bill of complaint—marked 12 therein by mistake—intervenor denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of said paragraphs of the bill of complaint, contain arbitrary restrictions; intervenor denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain capricious restrictions; intervenor denies that the acts or any of the acts of the

Legislature of Puerto Rico cited in paragraphs 8, 9 and 10, or in any of said paragraphs of the bill of complaint, contain unreasonable restrictions; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of said paragraphs of the bill of complaint, contain arbitrary discriminations; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain capricious discriminations; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10, or in any of said paragraphs of the bill of complaint, contain unreasonable discriminations; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain arbitrary prohibitions; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain capricious prohibitions; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of said paragraphs of the bill of complaint, contain unreasonable prohibitions; intervener denies that the provisions or any of the provisions of the acts of the Legislature of Puerto Rico, or any other acts of the Legislature of Puerto Rico, cited and mentioned in the bill of complaint were directed at the plaintiff or at any other person or corporation in particular, but on the contrary alleges that each and all of the said acts were approved without

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any intention or desire to affect or damage plaintiff or anybody else in particular and that they were approved as legislative measures considered by the Legislature of Puerto Rico to be of public interest; intervener denies that in Act 115, or in any other act mentioned in the bill of complaint an attempt was made to prevent plaintiff and the plaintiff only, from using any trade-marks which plaintiff could lawfully and legally use and alleges that the provisions of Act 115 were intended to be applicable to all coming

within its provisions; intervener denies that a specific or sole discrimination was attempted in Section 44 of Act No. 6; intervener denies that Act No. 149 attempted to cure every or any omissions in previous legislation which failed to discriminate effectively or otherwise against plaintiff, and further alleges that no discrimination was attempted against plaintiff by the previous or any previous legislation; intervener denies that the Legislature by Act 149, or by any other act, provided or has ever provided a complete prohibition or any other prohibition as against the plaintiff only as to the use of trade-marks or otherwise, but on the contrary alleges that all prohibitions contained in the legislation referred to in the bill of complaint or in any of the said legislation, were and are intended to apply equally to all of those coming within such prohibitions; intervener denies that the Legislature by Act 149, or by any of the provisions thereof, or by any other act, attempted or attempts to prevent plaintiff from benefiting from any rights or property or use which it may lawfully own and which it may lawfully use in this Island, and intervener alleges that under the provisions of the laws in question, which are valid laws, not only plaintiff but anyone coming within the prohibitions contained in said legislation, are subject to such prohibitions and restrictions, which were approved by the Legislature of Puerto Rico for the purpose of protecting the public interest, motivated by legitimate reasons and as prohibitions and restrictions which the Legislature of Puerto Rico has a right to impose by law.

Intervener admits that the Memorial mentioned in paragraph 11 of the bill of complaint was addressed to the Legislature of Puerto Rico by several persons and entities as representing the "Puerto Rican Rum Producers" and a copy of said Memorial is the one attached to the bill of complaint, intervener, however, denies

that the said Memorial shows what plaintiff pretends, but on the contrary alleges that the said Memorial only shows and was directed to show the power of the Puerto Rican Legislature to protect the local industry and to legislate in connection with the matters and things referred to in the said Memorial.

TWELFTH. Answering the allegations of sub-paragraph (a) of paragraph 12 of the bill of complaint this intervener denies upon information and belief that the provisions of Section 2 of Act 149, or any part of the said provisions, are in conflict with provisions, or any of the provisions of the Federal Alcohol Administration Act or regulations or of any of the regulations thereunder; as to the allegation that the Federal Alcohol Administration Act, as amended, is paramount or mandatory in this Island, such allegation is a conclusion of law and for that reason intervener makes no answer thereto, but intervener alleges that whether or not the said Act is paramount or mandatory in Puerto Rico is immaterial as the provisions of Section 2 of Act of 1937 amending Section 40 of Act 6 approved June 30, 1936, are not in conflict with any federal legislation as this intervener is informed and believes.

Further answering the allegations contained in said sub-paragraph (a) of paragraph 12 of the bill of complaint, this intervener alleges that Section 2 of the Act of 1937 amending Section 40 of Act No. 6 of June 30, 1936, regulates matters in connection with labeling which are within the powers and jurisdiction of the local government in dealing with the manufacture of rum in Puerto Rico; as to the allegations to the effect that no label used in Puerto Rico by plaintiff or by anyone can in any respect depart from the regulations of the Federal Alcohol Administration Act, this intervener refuses to answer the same as it is a conclusion of the pleader, but intervener further alleges, upon information and belief, that in complying with the local legislation as to labeling there is no necessity of departing from the regulations or any of the regulations of the Federal Alcohol Administration Act.

This intervener denies upon information and belief that said Section 2 of Act 149, or any of the provisions thereof, discriminates against plaintiff in any way or manner.

Intervener is without knowledge as to whether or not plaintiff has a right to use the name "Bacardi" or any of the Bacardi trademarks and therefore demands strict proof thereof.

Intervener denies that the purpose of paragraph (b), Section 4 of

Act 149 is to prevent plaintiff from exporting its product, or any of its products in bulk from Puerto Rico and this intervener denies that the purpose of the provisions or any of the provisions of said paragraph (b) is to prevent plaintiff from using labels or trademarks which it may have a right to use, but on the contrary alleges that the purpose of the provisions of said paragraph and of all of the provisions thereof, is to protect the revenues of the Insular Government and to protect the consuming public from fraud and deceit and that the said provisions and all of the said provisions are directed equally to all those coming under the purview thereof.

Further answering the allegations contained in sub-paragraph (a) of paragraph 12 of the bill of complaint, this intervener denies that the provisions or any of the provisions of paragraph (b) of Section 4 of Act 149 are illegal; intervener denies that the provisions, or any of the provisions of paragraph (b) of Section 4 of Act 149 are unconstitutional; intervener denies that the provisions or any of the provisions of paragraph (b) of Section 4 of Act 149 are void; intervener denies, upon information and belief that the said provisions or any of them contravene the Federal Alcohol Administration Act; intervener denies that the said provisions or any of them violate the commerce clause; intervener denies that the provisions or any of the provisions of the said paragraph (b) of Section 4 of Act 149 violate the Fourteenth Amendment to the Constitution of the United States; intervener denies that the provisions or any of the provisions of said paragraph (b) of Section 4 of Act 149 violate the due process clause of the Organic Act of Puerto Rico.

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Intervener, as to sub-paragraph (c) of paragraph 12 of the bill of complaint admits that Section 5 of Act 149 amends Section 97 of Act No. 6 approved June 30, 1936 by providing in sub-section (a) in substance a duplication of Section 97 of Act No. 6 and adding thereto sub-section (b), whereby any holder of a permit may appeal to a court of competent jurisdiction through such ordinary and extraordinary proceedings as may be necessary to demand protection against violations of said Act on the part of

other persons upon the giving of a bond in an amount of not less than \$5,000 nor more than \$30,000; as to the allegation made in the bill of complaint that this sub-section permits the enforcement of the Act at the instance of a private person or a common informer, intervener alleges that the provision of the law attacked by plaintiff gives the right to demand protection against violations of this Act not to all persons but to permit holders; intervener denies that the said provisions permit the enforcement of the Act in accordance with the person's private conception of the purport of the Act; intervener denies that the said provisions permit the enforcement of the Act even when the person seeking protection for violations of the Act may have sustained no legal damages whatsoever, but on the contrary alleges that permit holders would be damaged by violations of the Act on the part of other persons; intervener denies that only permit holders could have the right or have the right to an action for the enforcement of the Act; intervener denies that the provisions assailed by plaintiff may be construed as a delegation of authority; intervener denies that the said provisions or any of them limit effectually or otherwise the designated administrative officers or any other officers whose function it is to interpret or enforce the said Act; intervener denies that the said provisions or any of them eliminate the Treasurer of Puerto Rico from such proceedings, and further alleges that the said

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provisions of the law do not affect the powers or any of the powers of the Treasurer of Puerto Rico or of any other officer of the Government of Puerto Rico in connection with the enforcement of the Act; intervener denies, upon information and belief that the additional provision for bond limited as to minimum and maximum amount is an attempt, illegal or otherwise to deprive the courts of the discretion to protect litigants; intervener is without knowledge as to what number of permit holders would demand protection against the violations of this Act and therefore denies the allegation made in the bill of complaint that plaintiff would be subjected to a multiplicity of suits.

Further answering the allegations made in sub-paragraph (c) of

paragraph 12 of the bill of complaint intervenor is without knowledge as to the allegations made in the last sentence of sub-paragraph (c) except that intervenor alleges that any suit filed by this intervenor, if intervenor should decide to file such a suit, would not be filed for the purpose of destroying the business or any of the business of the plaintiff in Puerto Rico, but for the sole purpose of protecting itself as a permit holder against violations of the Act; and in such case this intervenor would be ready and willing to post bond in sufficient amount to answer for any damages should such suit be decided and determined adversely to this intervenor.

Answering the allegations contained in sub-paragraph (d) of paragraph 12 of the bill of complaint intervenor denies that Section 3 of Act 149 amending Section 44 of Act No. 6 was enacted to prevent plaintiff from conducting its business in Puerto Rico, but on the contrary alleges that said Section 3 was enacted for the purpose of establishing restrictions and prohibitions which the Legislature of Puerto Rico deemed necessary and advisable, and to be applied equally to all parties and persons coming within its provisions; intervenor, as to the allegations made in said sub-paragraph (d) in plaintiff's bill to the effect that Section 3 was enacted

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to cure what the plaintiff believes was an oversight in the acts referred to in the bill of complaint, such allegation is immaterial to this cause and besides is a conclusion of the plaintiff and for that reason this intervenor makes no answer thereto; intervenor is without knowledge as to whether or not plaintiff is entitled to the use of any Bacardi trade-marks and therefore demands strict proof thereof; intervenor denies upon information and belief that the previous acts, or any acts of the Legislature of Puerto Rico has taken or takes from the plaintiff any property rights; intervenor denies that Section 3 and Section 7 of Act 149 or any one of them are applicable to plaintiff only but on the contrary alleges that they are equally applicable to all others coming under the provisions thereof. Further answering the allegations contained in said sub-paragraph (d) of paragraph 12 of the bill of complaint

intervener says that it is without knowledge as to the allegation made in the bill of complaint to the effect that plaintiff has the right to use the trade-marks mentioned in the bill of complaint and therefore demands strict proof thereof. And intervener denies that the provisions of the law or any of the provisions of the law mentioned in the bill of complaint are applicable to plaintiff only or discriminatory against plaintiff only but on the contrary alleges that such provisions are equally applicable to all coming under the purview thereof; intervener denies that Sections 3 and 7 combined or separately permit all other entities except the plaintiff to operate without restriction, and in this connection intervener alleges that the provisions of the said sections apply to whoever may come under the provisions of said sections. Intervener denies that the said provisions or any of them deprive plaintiff of the equal protection of the law guaranteed by the Constitution of the United States; intervener denies that the said provisions or any

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of them deprive plaintiff of the equal protection of the law guaranteed by the Organic Act of Puerto Rico; intervener denies that said provisions or any of them deprive plaintiff of its property or any of its property without due process for the reasons, or for any other reasons, stated in the bill of complaint.

THIRTEENTH. Answering the allegations contained in paragraph 13 of the bill of complaint intervener denies that Act 149, or any of its provisions, prohibits plaintiff from using trade-marks which it may be entitled to use except that intervener admits that Section 44 of Act No. 6 approved June 30, 1936, as amended by Section 3 of Act 149 of May 15, 1937, prohibits among other things any holder of a permit to distill, rectify, manufacture, bottle or can any distilled spirits, rectified spirits or alcoholic beverages on which there appears, whether on the containers, labels, stoppers or elsewhere any trade-mark, if said trade-mark has been used previously in whole or in part, directly or indirectly, or in any other manner anywhere outside of the Island of Puerto Rico.

Intervener is without knowledge as to the plaintiff's right to the use of the Cuban trade-marks or any of said trade-marks, and

therefore, for lack of such knowledge denies that plaintiff is deprived of any rights under the Convention between the United States and Cuba, or under the Act of Congress of February 20, 1905; intervener denies that Act No. 149 is contrary to the purposes of the Convention between the United States and Cuba and also denies that said Act 149 frustrates the intent of said Convention. The intervener further alleges, answering the allegation made by plaintiff in said paragraph 13 of the bill of complaint to the effect that Act No. 149 might provoke retaliatory action against American citizens by other countries signatories to that Convention, that said allegation is immaterial and an opinion of the plaintiff, and for such reason intervener makes no answer thereto.

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FOURTEENTH. Answering the allegations contained in paragraph 14 of the bill of complaint this intervener admits that the amount in controversy exceeds exclusive of interests and costs, the sum of three thousand dollars; intervener denies that the said Act No. 149 or any of the provisions thereof involve the destruction of the plaintiff's name; intervener reiterates that it is without knowledge as to whether plaintiff has the right to Bacardi trade-marks, or to any of them, and therefore demands strict proof thereof; intervener is without knowledge as to the value of Bacardi's trade-marks; intervener is without knowledge as to whether plaintiff has lawfully acquired Bacardi's trade-marks, or any of them and therefore demands strict proof thereof; if the word "value" and the word "right" inserted in the first line of paragraph 14 of the bill of complaint are mentioned by plaintiff in connection with alleged rights of the plaintiff to Bacardi trade-marks or to any of the Bacardi trade-marks; intervener is without knowledge as to the right of the plaintiff to said trade-marks or any of them, or as to the value of the said trade-marks or any of them.

FIFTEENTH. Intervener, answering the allegations contained in paragraph 15 of the bill of complaint denies that Act 149 or any of the provisions thereof is unconstitutional; intervener, fur-

ther answering the allegations contained in paragraph 15 of the bill of complaint denies that Act 149 or any of the provisions thereof is void; intervener denies that the Act amended by said Act 149 or any of the provisions of said amended Act is unconstitutional; intervener denies that the Act amended by said Act 149 or any of its provisions is void.

As to the allegations made by plaintiff in said paragraph 15 of the bill of complaint that the Acts themselves and the execution thereof will irreparably damage said plaintiff, this intervener is without knowledge and therefore demands strict proof thereof.

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SIXTEENTH. Answering the allegations contained in paragraph 16 of the bill of complaint this intervener admits that the plaintiff will be prevented from shipping in containers of over one-gallon capacity to the United States, rum produced in Puerto Rico; intervener denies that the provisions limiting the size of the containers are unreasonable; intervener denies that the provisions limiting the size of the containers are arbitrary; intervener denies that the provisions limiting the size of the containers are illegal; intervener denies that the provisions limiting the size of the containers are unconstitutional; this intervener is without knowledge as to the other allegations set forth in paragraph 16 of the bill of complaint and therefore demands strict proof thereof.

SEVENTEENTH. Answering the allegations contained in paragraph 17 of the bill of complaint this intervener denies that Sections 2, 3, 4 and 5 of Act 149, or any of them, are contrary to or violate the Fifth and Fourteenth Amendments to the Constitution of the United States or either of the said amendments; or the Commerce Clause, Article 1, Section 8, Clause 3 of the Constitution; intervener denies that Sections 2, 3, 4 and 5 of Act 149, or any of them are contrary to or violate Sections 2 or 9, or either of them, of the Organic Act of Puerto Rico; intervener denies, upon information and belief, that Sections 2, 3, 4 and 5 of Act 149, or any of them are contrary to or violate the Federal Alcohol Administration Act or any of its provisions or amendments; intervener denies that Sections 2, 3, 4 and 5 of Act 149, or any of them,

are contrary to or violate the Convention between the United States and Cuba; intervener denies that Section 7 of Act 149 is contrary to or violates the Fifth and Fourteenth Amendments to the Constitution of the United States or either of said Amendments; intervener denies that said Section 7 is contrary to or violates Sections 2 and 9 or either of the said sections, of the Organic Act of Puerto Rico; intervener denies, upon information and belief, that said Section 7 is contrary to or violates the Federal Alcohol Administration Act, or any of its amendments; intervener denies that said Section 7 is contrary to or violates the Convention between the United States and Cuba; intervener denies that such sections of Act No. 6 of 1936, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the Fifth and Fourteenth Amendments to the Constitution of the United States, or either of said amendments; intervener denies that such sections of Act No. 6 of 1936, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the second and ninth sections of the Organic Act of Puerto Rico, or either of said sections; intervener denies, upon information and

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belief, that such sections of Act No. 6, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the Federal Alcohol Administration Act or any of its provisions or amendments thereto; intervener denies that such sections of Act No. 6 of 1936, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the Convention between the United States and Cuba; intervener denies that Section 44 of Act No. 6 is void or of no effect for the reasons set forth in the bill of complaint or for any other reasons and alleges that the subject matter of the said section is within the title of the said Act.

Intervener further alleges and avers, answering the allegations contained in said paragraph 17 of the bill of complaint, that the sections and acts mentioned therein are constitutional and legislation within the powers of the Legislature of Puerto Rico; this intervener refuses to answer the allegation contained in paragraph 17

of the bill of complaint that plaintiff has no plain, complete and adequate remedy at law as said allegation is a conclusion of law.

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SPECIAL AND SEPARATE DEFENSES.

1. For a first, further, separate and distinct defense, intervener alleges that plaintiff herein is estopped and barred from challenging or questioning the validity of Act No. 6 of the Legislature of Puerto Rico approved June 30, 1936, as amended, to wit:

(a) It appears from paragraph 7 of the bill of complaint that plaintiff herein received from the defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol, and intervener alleges, upon information and belief, that the said permits contain a paragraph which translated from the Spanish language, reads as follows:

"This permit is conditioned upon compliance with the provisions of the 'Alcoholic Beverages Act' of Puerto Rico and with all regulations applicable in accordance with the laws now in force or which may be in force hereafter, and Federal laws and regulations applicable, and shall remain in force from the date of its issuance and until it may be suspended, revoked, annulled, surrendered voluntarily or terminated by virtue of the provisions of the laws or regulations."

(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted it thereunder and intervener is informed and believes that plaintiff has operated under said permits.

2. For a second, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint are valid exercise of the police power and of the general legislative powers granted to the Legislative Assembly of Puerto Rico by the Organic Act and by the Twenty-first Amendment of the Constitution of the United States.

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3. For a third, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint constitute necessary enactments for the control and regulation of the liquor traffic within the powers of the Legislative Assembly of Puerto Rico, and especially of the rum industry, and are not a burden on interstate commerce, nor do they constitute a denial of the equal protection of the laws.

4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that plaintiff herein is barred by his laches to assail the validity of the statutes aforesaid.

5. For a fifth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener says that the facts alleged in said bill of complaint are insufficient to constitute a valid cause of action in equity.

Wherefore, intervener prays that the plaintiff's bill may be dismissed with costs.

San Juan, Puerto Rico, August 9, 1937.

ANTONIO J. MATTA,
J. SIFRE, JR.,

Attorneys for Intervener,
DESTILERIA SERRALES, INC.

UNITED STATES OF AMERICA.

DISTRICT OF PUERTO RICO,

CITY OF SAN JUAN, ss.

Felix Hilera, being first duly sworn on his oath deposes and says that he is the general manager of Destileria Serralles, Inc., a corporation organized under the laws of the Island of Puerto Rico with its principal office in the municipal jurisdiction of Ponce, Puerto Rico, intervener herein; that he is familiar with the contents of the above answer and that the matters and things therein contained are true to the best of his knowledge, information and belief, and as to the allegations made on information and belief

deponent believes them to be true; that the reason this verification is made by deponent is that deponent is the person most familiar with the business and affairs of Destileria Serralles, Inc. and with the matters and things alleged in the above answer.

FELIX HILERA.

Subscribed and sworn to before me this ninth day of August, 1937, by Felix Hilera, of age, married, resident of Ponce, Puerto Rico, to me personally known, at San Juan, Puerto Rico.

LULU G. DONOHUE, Clerk.

JOURNAL ENTRIES.

January 17, 1938.

This case is called for trial, all parties answer "ready". Plaintiff is represented by D. F. Kelley and Rafael O. Fernandez, Esquires; defendant appears by J. A. Gonzalez, Esq., Assistant Attorney General; Jaime Sifre, Esq., appears for intervenor Destileria Serralles, Inc., and Miguel Guerra, Esq., for intervenor P. R. Distilling Co.

Upon motion of D. F. Kelley, Esq., the name of Jerome L. Isaacs, Esq., is entered as an attorney in this court and also as one of the attorneys for complainant.

Attorney for plaintiff moves that certain amendments be made in the bill of complaint, which motion is granted, the amendments being the following:

On page 3, second line, instead of May 2, 1936 it should read: "May 2, 1933".

On page 4, second line, change May 25, 1935 to "November 23, 1935".

On page 4, line 12, insert after word "amended" the date "March 28, 1936".

On page 18, line 8, after "Fourth and Fifth Amendments to the Constitution of the United States" add "and the Commerce Clause thereof, Article 1, Section 8, Clause 3".

Attorney for plaintiff also moves to strike certain parts of paragraph 5 of answers of intervenors, which motion is not passed upon at this time.

Intervenor, Destileria Serralles, Inc., moves to amend its answer which motion is granted as follows:

On page 16, paragraph 17, line 5, after semicolon insert "or the Commerce Clause, Art. 1, Sec. 8, Clause 3 of the Constitution".

Thereupon, part of testimony in behalf of plaintiff heard and further trial continued to January 18, 1938.

January 18, 1938.

The trial of the above case resumed, all parties being present as of yesterday.

Thereupon, further testimony of witnesses in behalf of complainant heard, and it being the adjournment hour, the further trial of the case is continued until Wednesday, January 19, 1938, at 9:30 A.M.

January 19, 1938.

The trial of the above case is resumed, all parties being present as of yesterday.

The remainder of testimony in behalf of the complainant, testimony of intervenors and argument of counsel heard, and it being the adjournment hour, the further argument is continued until Thursday, January 20, 1938 at 9:30 A.M.

January 20, 1938.

The trial of the above case is resumed, all parties being present as of yesterday.

The remainder of argument of counsel heard and case is taken under submission by the court. Complainant is allowed 15 days to file its brief and defendant and intervenors ten days thereafter for reply.

[Title omitted.]

OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW.

[Filed May 9, 1938.]

By this suit the plaintiff asks that the Treasurer of Puerto Rico be enjoined from enforcing certain provisions of Act No. 6 of the Legislature of Puerto Rico approved by the Governor on June 30, 1936, and Act No. 149 of May 15, 1936, amending said Act No. 6 and making the same permanent. It is alleged that the provisions assailed are repugnant to the due process and equal protection and commerce clauses of the Constitution of the United States, and also violative of the provisions of the Organic Act of Puerto Rico. It is further alleged that the provisions of the Federal Alcohol Administration Act of August 29, 1935, as amended, and the Trade-mark Convention between the United States and various American republics, including Cuba, signed February 20, 1929, are also violated. The plaintiff alleges that the requirement that all bills shall refer to one subject, which shall be expressed in the title, is not observed.

On August 23, 1937, this court granted a preliminary injunction *pendente lite* by the terms of which the defendant Treasurer was enjoined and restrained, during the pendency of this suit, and the final disposition thereof, from enforcing or attempting to enforce against the plaintiff the provisions of the said Act of the Legislature of Puerto Rico insofar as the same prohibit the complainant from shipping its products out of Puerto Rico with the label and trade-mark attached thereto, and also insofar as said Acts prohibit complainant from exporting its products to the United States or elsewhere in bulk.

In January, 1938, the case was heard on its merits. Considerable testimony was taken and elaborate briefs have been submitted and considered. The testimony now before me is not materially different from that considered on the motion for a preliminary injunction. A findings of fact as stated in the opinion

filed in the preliminary hearing may be reiterated as the findings of fact in the present hearing.

FINDINGS OF FACT.

Briefly it may be said that the plaintiff herein has invested large sums of money in connection with its business in Puerto Rico. It has been given all necessary permits to enable it to manufacture and sell rum in Puerto Rico and to export the same. It has a contract with Bacardi Corporation of Cuba which authorizes plaintiff to use the labels and trade-marks more particularly described in the written contract which was introduced in evidence. The right to use such labels and trade-marks are of great value to plaintiff.

CONCLUSIONS OF LAW.

A reading of the briefs, without a clear understanding of the testimony and the pleadings, would lead one to the thought that the power of the Legislature of Puerto Rico to regulate the manufacture, sale and traffic in alcoholic beverages within its territory is challenged. No such issue is involved. The Legislature of Puerto Rico, under the Twenty-first Amendment to the American Constitution, has plenary power to regulate the manufacture, sale and traffic in alcoholic liquors within Puerto Rico and even to prohibit such manufacture or sale. It may also impose such restrictions and regulations as it may deem adequate to protect not only the health, safety and morals of the people, but also to promote the general prosperity and adequately protect its industry. It is, therefore, unnecessary to refer further to numerous cases which have been cited to sustain this power.

It has been said by an eminent American jurist that where the police power is invoked two things must appear. First, an evil; second, a remedy calculated to correct the evil. Applying this principle to the instant case, let us see what the evil is as it appears in the challenged legislation. Section 1(b) of Law No. 6 of June 30, 1936 states:

"It has been and is the intention and the policy of this Legis-

lature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Here we have the evil. What is the remedy provided by the Act? Quoting from Section 44:

"No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; Provided, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Does the remedy provided correct the evil complained of? It is difficult to see how anyone can urge that it does.

Counsel for defendant and intervenors rely strongly on the opinion of the Supreme Court of the United States *in re Premier-Pabst Sales Co. v. Grosscup*, 298 U. S. 226. This opinion sustains the constitutionality of an Act of the Legislature of Pennsylvania, which Act prohibits the manufacture of beer within the State by persons who are non-residents. In other words, that no beer may be manufactured in Pennsylvania by persons not domiciled within the State. The complainant does not come within the principle

announced. The Bacardi Corporation of America is duly authorized to manufacture its rum in Puerto Rico and to sell it in Puerto Rico or elsewhere. The limitation against which plaintiff complains, and which is not involved in the Pennsylvania case, is that it may not attach to its product a label or trade-mark indicating the quality or the process by which its rum is manufactured, if such label or trade-mark had been previously used outside of Puerto Rico and not used in Puerto Rico prior to February 1, 1936.

The case of the *State Board of Equalization of California v. Young's Market Company*, 299 U. S. 59, is also cited. What does the Young Market Company case decide? It sustains the power of the Legislature of California to require the payment of a license fee of \$750 a year for the privilege of importing or bringing into California beer manufactured outside of the state. It is urged that the principle involved in this decision necessarily implies the same authority over exports as is given over imports. Counsel for one of the interveners state "The Twenty-first Amendment properly construed frees from the Interstate Commerce Clause also exportations". To sustain this proposition we must interpolate into the Twenty-first Amendment language which does not appear therein. Justice Brandeis, who delivered the opinion of the court, states as follows:

"The imposition would have been void, not because it resulted in discrimination, but because the fee would be a direct burden on interstate commerce; and the Commerce Clause confers the right to import merchandise free into any State, except as Congress may otherwise provide. The exaction of a fee for the privilege of importation would not, before the 21st Amendment, have been permissible even if the State had exacted an equal fee for the privilege of transporting domestic beer from its place of manufacture to the wholesaler's place of business."

The Twenty-first Amendment refers only to importations. By necessary implication it excludes from its provisions exportations.

Therefore, the law as to exportation remains as it was before the adoption of the Twenty-first Amendment.

It is insisted that the Legislature of Puerto Rico may prohibit exportations of Puerto Rican products as a proper exercise of the police power to protect its industries by adopting measures which will afford protection to its markets. In support of this proposition there is cited the case of *Sligh v. Kirkwood*, 237 U. S. p. 50, which involved the power of the State of Florida to make it a criminal offense to deliver for shipment in interstate commerce citrus fruits then and there immature and unfit for consumption. The court says:

"We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida. It was competent for the Legislature to find that it was essential for the success of that industry that its reputation be preserved in other States wherin such fruits find their most extensive market. The shipment of fruits so immature as to be unfit for consumption and consequently injurious to the health of the purchaser, would not be otherwise than a serious injury to the local trade, and would certainly affect the successful conduct of such business within the State. The protection of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose."

Let it be conceded that the Legislature of Puerto Rico has the same power to legislate in regard to the rum industry as the State of Florida has to legislate for the protection of citrus fruits. If it had appeared in the Florida case that the fruits offered for exportation were in every respect of high quality and fit for consumption, can anyone doubt that the decision would have been different? In the case before us it is nowhere suggested, in the testimony or the pleadings, that rum manufactured by Bacardi Corporation is

unfit for consumption or in any respect fails to measure up to the quality required by the law and regulations of Puerto Rico. If there is any law in Puerto Rico fixing any standard of quality or providing for any inspection of rum manufactured, or to be manufactured within its borders, it has not been called to my attention. The testimony shows that rum manufactured in Puerto Rico by complainant is produced in accordance with a process or formula which has been used in the manufacture of rum in Cuba and other countries for a period of seventy-five years. This rum may be legally sold in Puerto Rico. It may be exported from Puerto Rico to Continental United States or to any foreign country provided it is sold and exported without attaching a label or trade-mark which complainant has a clear right to use, and which can only mean that the rum within the container, to which the label or trade-mark is attached, is a rum manufactured in accordance with the process or formula owned by citizens of the Republic of Cuba. The testimony is that the rum manufactured by complainant is the same rum produced by the owners of the trade-mark in Cuba.

It will thus be seen that the basis on which the decision in the Florida case rests does not exist in the instant case. If the base fails the house must fall. In this connection it is then urged that rum Bacardi is known throughout the world as a product of Cuba. That it was first manufactured in Cuba seems to be certain. The testimony, however, shows that it has been for many years manufactured in France, in New York State and in Mexico, and probably other countries. I am unable to see how the manufacture in Puerto Rico of a high quality rum in accordance with a formula or process which has stood the test of time can possibly be injurious to the rum industry in Puerto Rico. It should be noted here that on every bottle or container to which the Bacardi label and trade-mark is attached, there is also in prominent letters the words "Puerto Rican Rum".

Puerto Rico produces large quantities of sugar cane. In fact the growing and grinding of sugar cane and production of sugar therefrom is the principal industry of the Island. It is well known

that progressive farmers are constantly seeking improved varieties of cane; cane that will be immune to pests and plant diseases and which will yield a maximum sucrose. Let us suppose that a cane grower in Hawaii has by experiments developed such a type of cane. A grower in Puerto Rico, desiring to avail himself of the advantages to be derived from such improved variety, introduces such cane in Puerto Rico. Would the Legislature of Puerto Rico, in the exercise of its police power, have a right to say that such cane may not be produced in Puerto Rico because it is known as Hawaii cane and to grow or produce Hawaii cane in Puerto Rico would be calculated to injure the reputation of cane originally planted and grown in Puerto Rico?

It seems to me that instead of being injurious to the rum industry in Puerto Rico, the production of Bacardi here, assuming it to be a superior rum, must naturally aid the industry. It demonstrates to the world that Bacardi may be produced not only in Cuba but elsewhere and especially in Puerto Rico. It certainly cannot be contended that the limitations and restrictions against which plaintiff complains if strictly enforced will in any sense relieve the rum industry in Puerto Rico from the burdens of foreign or absentee capitalism.

If the Legislature of Puerto Rico desires to eliminate all competition by foreign capital as a means of protecting the liquor industry, and so as to avoid the increase and growth of financial absenteeism, there is a very simple and direct way to accomplish this purpose. I know of no reason why the Legislature of Puerto Rico may not, as Pennsylvania has done, deny to any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico. It may limit the number of licenses which may be granted even to residents and citizens of Puerto Rico. I do not mean to say that such a policy would be wise or desirable. That is a legislative question. But, if the evil which the legislation here under consideration condemns is to be eliminated, some method other than that provided must be adopted. It is not contended that the manufacture and sale of complainant's rum in

Puerto Rico or in the United States will unfavorably affect the rum industry, but the thing which makes it objectionable and injurious to the industry is the fact of the use of certain labels or trade-marks.

If the use of what we may term foreign labels or rum produced in Puerto Rico may be permitted without injury to the industry provided that they were so used prior to February 1, 1936, it is difficult to see how the use of other similar labels subsequent to February 1st would be so injurious. The testimony clearly establishes that such labels were and are now used. Whether so intended or not, the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination.

So far we have been dealing with the provisions of Section 44. Complainant also contends that Section 44(b) is an unlawful interference with interstate commerce in that it prohibits plaintiff from shipping its rum in bulk or barrels to Continental United States or to any foreign country. It will be noted that such rum may be legally sold in Puerto Rico in bulk or barrels, but this Act undertakes to deny the plaintiff's right to export it in like containers. This question has been considered by me in an opinion just filed in the case of *Rafael del Valle Pijem v. The Treasurer of Puerto Rico*, and it is unnecessary to elaborate further in this opinion. There can be no doubt that the Legislature of Puerto Rico has the power to regulate or prescribe the size of containers of all alcoholic liquors brought into and offered for sale in Puerto Rico. Rum manufactured in Puerto Rico, in accordance with its laws, becomes a legitimate article of interstate commerce subject, of course, to such restrictions as may be imposed by the Congress of the United States. As indicated elsewhere in this opinion the Twenty-first Amendment to the Constitution gives to States and territories control over importations but it does not in any way effect interstate commerce as to exportations. We then have this situation: Complainant has produced in Puerto Rico a rum which it may sell in Puerto Rico in barrels but may not sell the same

to dealers or manufacturers in Continental United States unless the same is shipped in containers of not more than one gallon. The testimony in the case is conclusive that to require shipments in containers of not more than one gallon is to deny the right to export at all. The cost of such shipment would exceed the value of the commodity.

Counsel for intervenors have urged with a great deal of earnestness that the complainant is in no position to assail the constitutionality of the statute here challenged. Specifically it is urged that at the time the bill of complaint herein was filed the plaintiff had no property right for which it could seek protection in equity. If the plaintiff had no property right at that time, the position of counsel must be sustained. It is submitted that the plaintiff has no property right to be protected because the contract between the Cuban Corporation and Bacardi Corporation of America was not at the time a binding contract. It did not become binding upon the parties until there had been an exchange of ratification between directors of the two companies. This ratification had not taken place at the time this action was brought. If the Cuban company was here denying the right of complainant to use the labels in accordance with the terms of the contract, and if no ratification had taken place, this position would undoubtedly be sound. The testimony, however, clearly shows that even before the formal ratification of the contract, the use of the label and trade-mark by the American company was assented by the Cuban company. Not only so, but it furthermore appears that the Cuban company actually participated in such use of the labels. This is not a contract of lease or assignment of the trade-mark which would require, in order to be legal, a transfer of the business. It seems to me that the right of the Cuban company, under the convention between the United States and certain American republics, including Cuba, would have a right to employ an agent in Continental United States to manufacture rum Bacardi for the account of the Cuban company, and rum so manufactured might lawfully carry the trade-mark or label of the Cuban company. And stripped of all legal

formalities that is what the contract here in question really is. The label is to be used only on rum manufactured in accordance with the formula owned by the company, and is to be produced under the personal supervision of an authorized agent of the Cuban company. The testimony further shows that the Cuban company has a substantial participation in the profits of the American company. The case, therefore, is quite different from those cases involving the assignment of a trade-mark to be used in the uncontrolled discretion of the assignee. As many of the cases state a trade-mark is supposed to designate the source of merchandise, not its manufacture or differently stated, to indicate its quality or character. No particular place of manufacture is necessary to authorize the use of a trade-mark. The trade-mark here in question designates a rum manufactured according to a formula, which formula is owned by the owner of the trade-mark. How there could be any confusion, fraud or deception when the trade-mark is used only on merchandise manufactured under the supervision and direction of the owner of the trade-mark and in accordance with a formula which has been used for more than half a century is beyond my power of comprehension.

It is entirely clear that the power to regulate the liquor industry cannot be measured by the same standard applicable to other industries. Conceding all this, I still am unable to agree that the use of a label or trade-mark, which indicates only the quality of the merchandise offered for sale, in any way comes within the powers conceded.

No case has been called to my attention, and I am quite sure none can be found, which sustains the proposition that the Twenty-first Amendment has in any way limited the power of Congress over interstate commerce, except as it affects importations of alcoholic liquors into a state or territory, or manufacture and sale therein. The exportation and sale of alcoholic liquors manufactured in Puerto Rico, in Continental United States or elsewhere, will in no way deplete the revenues of Puerto Rico. Let us assume that instead of using the labels and trade-marks of the Cuban

company, the plaintiff should put on its goods a label which states that "the rum contained herein is made in Puerto Rico under the direction of the Cuban Bacardi and in accordance with its formula". This would be another way of saying that this is Bacardi rum and that is all that the label and trade-mark say to the public. May a manufacturer of a lawful article of commerce not be free to state just what his article is.

I entertain no doubt that the Legislature of Puerto Rico, in the exercise of its police power, may limit the number of persons or firms who may obtain licenses to manufacture or sell alcoholic liquors within the Island. It may regulate the traffic within Puerto Rico in any way which it deems to be for the best interest of the people, but this cannot mean that a person who is authorized to sell alcoholic liquors within Puerto Rico or to manufacture liquors within the Island, may not use a label or trade-mark to indicate to the public the source and quality of his product. The complainant is granted a license to manufacture and sell rum in Puerto Rico. It may sell the very rum to which it proposes to attach its labels and trade-marks provided it does not attach such labels and trade-marks. I am unable to find any authority or reason to sustain such a proposition.

It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power. Likewise, I would not be disposed to sustain plaintiff's contention to the effect that the legislation violates the provision of the Organic Act in that all bills shall relate to but one subject and that subject shall be expressed in the title.

I am forced to the conclusion that insofar as the challenged legislation prohibits the use of labels and trade-marks by the plaintiff on its product and denies to plaintiff the right to ship its

rum in bulk or barrels from Puerto Rico to the United States or elsewhere, it is invalid. Plaintiff is entitled to a permanent injunction against the defendant, Treasurer of Puerto Rico, insofar as it is proposed to enforce the said provisions of the legislation in question.

San Juan, Puerto Rico, May 9, 1938.

ROBT. A. COOPER,

United States District Judge.

PLAINTIFF'S PROPOSED CONCLUSIONS OF LAW

NOS. 15 AND 16 SUBMITTED BY PLAINTIFF.

[Filed May 24, 1938.]

15. Sections 40, 44 and 44(b) of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937, are invalid as contrary to the Federal Alcohol Administration Act.

16. Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937, prohibiting the use of the Bacardi trade-marks by the plaintiff, conflicts with the provisions of the Trade-Mark Convention of February 20, 1929, between the United States and Cuba, and is invalid.

[Title omitted.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

[Filed June 28, 1938.]

Since the filing of my opinion on May 9, 1938, including findings of fact and conclusions of law, counsel for plaintiff corporation have requested more specific findings of fact and conclusions of law. While I think this is unnecessary in order to comply with pertinent equity rules, I have concluded to make further and more specific findings in order to remove any doubt in regard to the question. In said opinion the findings of fact on motion for preliminary injunction are adopted by reference. I did not think it necessary to set them out *in extenso*. Accordingly, I find the following:

FINDINGS OF FACT.

1. Since April 24, 1934, plaintiff, Bacardi Corporation of America, has been and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. It is authorized by its charter to manufacture, produce, distill and re-distill, develop, rectify, blend, mix, purify, recover, flavor and denaturize alcohol or alcoholic liquors for beverage purposes.

2. Plaintiff, Bacardi Corporation of America, was registered to do business in Puerto Rico on March 31, 1936, under the laws of Puerto Rico relative to foreign corporations, and on April 6, 1936 received from the Treasurer of Puerto Rico a license to do business in Puerto Rico as a foreign corporation.

3. Defendant, Rafael Sancho Bonet, is the Treasurer of Puerto Rico, a citizen of the United States of America and Puerto Rico and resident and domiciled in Puerto Rico and is charged under the laws of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico.

4. This is a case of a civil nature between a citizen of the State of Pennsylvania and a citizen of the State of Puerto Rico wherein the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.

5. Plaintiff attacks Sections 40, 44(b) and 97(b) of Act No. 6 of the Puerto Rican Legislature, as amended by Act No. 149, and also Section 7 of said Act No. 149. The pertinent provisions of these sections read as follows:

"Section 40. Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content of volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English 'Puerto Rican Rum', in letters not

less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase 'Puerto Rican Rum' must appear on the label in letters not less than one-eighth (1/8) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word distilled, rectified, or blended, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; Provided, further, That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears."

"Section 44. No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; Provided, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico, on or before February 1, 1936."

"Section 44(b). Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the Continental

United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; Provided, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof the Treasurer is empowered to authorize the sale of such stock, in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

"Section 97(b). Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceeding as may be necessary, to demand protection against violations of this Act, on the part of other person, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

"Section 7. In regard to trade-marks, the provisions of the Proviso of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the

Continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the Continental United States, at any time prior to said date."

6. Continuously since 1862 Compania Ron Bacardi, S.A., a corporation organized under the laws of the Republic of Cuba, and its predecessors have been, and Compania Ron Bacardi, S.A. now is, engaged in the business of producing and selling alcoholic liquors, principally rum, throughout the world.

7. For more than twenty years, except for the period during national prohibition, Compania Ron Bacardi, S.A. and its predecessors have sold alcoholic liquors, principally rum, in Puerto Rico and elsewhere throughout the United States under trade-marks including the word "Bacardi", "Bacardi y Cia.", the representation of a bat in a circular frame, and certain distinctive labels. These trade-marks were duly registered in the United States Patent Office and in the Office of the Executive Secretary of Puerto Rico prior to the passage of the laws complained of in this suit.

8. During the years 1933 to 1937, inclusive, Compania Ron Bacardi, S.A. has sold in the United States more than three hundred seventy-five thousand (375,000) cases of rum bearing the registered trade-marks and labels set forth in 7 above and has spent over three hundred thousand dollars (\$300,000) in advertising to the public Bacardi rum bearing said trade-marks.

9. On June 8, 1934, and during the period since then the registered trade-marks and labels set forth in 7 above were and still are of great value to the plaintiff.

10. On June 8, 1934, plaintiff, Bacardi Corporation of America entered into a written agreement with Compania Ron Bacardi, S.A., by the terms of which the Cuban company authorized the plaintiff to manufacture and sell rum in certain localities and to use the trade-marks and labels (commonly known as the Bacardi

trade-marks and labels) belonging to the Cuban company and set forth in 7 above in connection with such manufacture and sale. On December 19, 1935, Bacardi Corporation of America entered into a supplementary agreement with Compania Ron Bacardi, S.A., extending the territory covered by the contract of June 8, 1934 to include Puerto Rico. The contract of June 8, 1934 provides that all rum manufactured and offered for sale by the plaintiff, Bacardi Corporation of America, to which the said trade-marks and labels are attached, is to be manufactured under the supervision of Compania Ron Bacardi, S.A., and is to be the same rum that the Cuban company manufactures and sells under the said trade-marks and labels.

11. That the contract between the Cuban company and the plaintiff company was formally ratified by the two companies, but even before the formal ratification, the use of the labels and trade-marks by the plaintiff was assented to by the Cuban company which actually participated in the use of said labels by plaintiff.

12. Bacardi rum is and always has been made according to definite processes and methods. It has been extensively advertised and it enjoys an excellent reputation. In accordance with the contract of June 8, 1934, the secret processes and methods under which Bacardi rum is made have been made available to the plaintiff. Plaintiff, in order to comply with the contract of June 8, 1934 by producing rum in Puerto Rico of the identical quality of that produced in Cuba by Compania Ron Bacardi, S.A., has used the secret processes and methods of Cuban Bacardi and brought to Puerto Rico from Cuba experts and technicians who have supervised the manufacture of rum for the plaintiff in Puerto Rico. The rum so manufactured in Puerto Rico by the plaintiff is made according to the secret methods and processes made available to plaintiff under the aforesaid contract and is the same product heretofore sold in the United States and Puerto Rico under the trade-marks set forth in paragraph 7 of these findings.

13. In March, 1936, plaintiff made arrangements for the installation in Puerto Rico of a plant for the conduct of its business.

It leased a building at a yearly rental of ninety-six hundred dollars (\$9,600) and expended about forty-five thousand dollars (\$45,000) for the installation of its plant. Up to the present time plaintiff's total investment in the said plant and manufactured product exceeds the sum of six hundred thousand dollars (\$600,000).

14. The right to use the Bacardi trade-marks and labels conferred to plaintiff under the contract of June 8, 1934 is a valuable property right. These trade-marks and labels symbolize a valuable good will and are of great value to the plaintiff in marketing its commodity.

15. Plaintiff has basic permits from the Federal Alcohol Administration to warehouse, rectify and bottle alcoholic beverages in Pennsylvania, which permits were amended on March 8, 1936 so as to authorize plaintiff to operate its business in Puerto Rico. Plaintiff also obtained from the Federal Alcohol Administrator basic permits to distill in Puerto Rico. On July 20, 1936 plaintiff obtained permits for the same purpose from the Treasurer of Puerto Rico.

16. On May 18, 1937, September 1 and September 3, 1937 the Federal Alcohol Administrator authorized plaintiff to use on rum manufactured in Puerto Rico certain labels in conformity with the Federal regulations on the subject and containing the registered trade-marks which plaintiff, by virtue of the contract of June 8, 1934, has a right to use.

17. A specimen of the label which plaintiff uses and proposes to use on rum manufactured and to be manufactured in Puerto Rico is as follows [on page 113]:

18. Plaintiff has in stock in Puerto Rico about three hundred fifty thousand (350,000) gallons of rum and is ready to bottle and ship that rum to the United States in quantities of approximately ten thousand (10,000) cases per month.

19. Plaintiff has or doubtless will have offers for the shipment of rum in bulk from Puerto Rico to the United States and is desirous of making such shipments

CARTA DE PLATA

PUERTO RICAN RUM*Ron Superior*

PREPARED & BOTTLED BY

**BACARDI CORP.
OF AMERICA****SAN JUAN, P.R.**

89 PROOF - 4/5 QUART



Produced in Puerto Rico by Special Authority and under the supervision of
COMPANIA RON BACARDI, S.A. SANTIAGO DE CUBA

SOLE DISTRIBUTORS IN U.S.A. SCHENLEY IMPORT CORP. NEW YORK, N.Y.

20. Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trade-marks, although there are at least three other companies now operating in Puerto Rico who use on their products trade-marks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico.

21. If plaintiff is prohibited from using the trade-marks and labels herein referred to it will suffer irreparable damage.

22. The cost of shipping rum in containers of one-gallon capacity or less is greater than the cost of shipping rum in larger containers.

23. That the requirement that shipments of rum be made in containers of not more than one gallon is to deny the right to export rum in bulk, as the cost of such shipments would exceed the value of the commodity.

24. There is no law in force at the present time in Puerto Rico fixing any standard of quality or providing for any inspection of rum manufactured or to be manufactured within Puerto Rico.

25. The exportation and sale of alcoholic liquors manufactured in Puerto Rico, in Continental United States or elsewhere, will in no way deplete the revenues of Puerto Rico.

26. That if the plaintiff is not permitted to use its corporate name its business will be greatly damaged and it will suffer great and irreparable loss.

CONCLUSIONS OF LAW.

1. At the time of the commencement of this action and since April 24, 1934, plaintiff was and still is a corporation duly organized and existing under the laws of the State of Pennsylvania.

2. Since March 31, 1936, plaintiff has been duly licensed to do business in Puerto Rico as a foreign corporation.

3. The Bacardi trade-marks referred to in the findings of fact were at all the times mentioned therein and still are valid and subsisting trade-marks.

4. Plaintiff has the lawful right to use the Bacardi trade-marks in Puerto Rico or elsewhere in the United States.

5. The contract dated June 8, 1934, as modified on December 19, 1935, was duly ratified by the parties thereto and is sufficient in law to authorize the plaintiff to use the Bacardi trade-marks. The right to use said trade-marks is a valuable property right.

6. The Bacardi trade-marks, as used in connection with the advertisement and sale of the rum manufactured by plaintiff, truthfully designate the product and its origin, and are not deceptive or misleading.

7. Plaintiff comes into equity with clean hands.

8. Rum manufactured in Puerto Rico is a legitimate article of commerce, subject only to such restrictions as to exportation as may be imposed by Congress, and such restrictions as to imports and traffic within Puerto Rico as may be imposed by the Legislature of Puerto Rico.

9. Rum manufactured by plaintiff in Puerto Rico may be legally sold in Puerto Rico and exported to the United States or any foreign country.

10. The provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149, approved May 15, 1937, prohibiting the use of certain trade-marks and corporate names, are an unreasonable and arbitrary interference with the enjoyment of property, are not a valid exercise of the police power, and violate the due process clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid.

11. The provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149, approved May 15, 1937, which restrict the use of certain trade-marks and corporate names, discriminate arbitrarily against the plaintiff, violate the equal protection clause of the Constitution of the United States and the Organic Act of Puerto Rico, and are invalid.

12. Plaintiff has a right to use its corporate name.

13. The provisions of Section 44(b) of Act No. 149, approved May 15, 1937, violates the due process clause of the Constitution of the United States and of the Organic Act of Puerto Rico insofar

as it prohibits the exportation of rum legally manufactured in Puerto Rico in containers of more than one gallon.

14. Sections 44 and 44(b) of Act No. 149, approved May 15, 1937, violate the commerce clause of the Constitution of the United States insofar as said sections prohibit the use of labels or trade-marks on rum otherwise legally manufactured in Puerto Rico, and insofar as it prohibits the exportation of rum otherwise legally manufactured in containers of more than one gallon.

15. Plaintiff has no plain and adequate remedy at law and is entitled to a decree for the relief prayed for in the bill of complaint and in accordance with the opinion filed herein on May 9, 1938.

San Juan, Puerto Rico, June 28, 1938.

ROBT. A. COOPER,

United States District Judge.

FINAL DECREE.

[Filed June 30, 1938.]

This cause came on to be heard on the merits before me on the 17th, 18th, 19th and 20th of January, 1938, and evidence, both oral and documentary, was submitted, and the cause argued by counsel. Upon consideration thereof and based upon the findings of fact as found in the opinion of the court dated August 23, 1937, in connection with the motion for a preliminary injunction, and ratified in the opinion of the court filed herein on May 9, 1938, and the further findings of fact and the conclusions of law set forth in the said opinion of May 9, 1938, which are hereby ratified and adopted by the court, and upon the further findings of fact and conclusions of law determined by the court on June 28, 1938.

It is ordered, adjudged and decreed: That the defendant Rafael Sancho Bonet, Treasurer of Puerto Rico, his successors, his agents and all those acting under his authority, and the Destileria Serralles, Inc., the Puerto Rico Distilling Company, their successors, officers and agents, and any and all persons holding permits from the Treasurer of Puerto Rico under the alcoholic beverages laws of

Puerto Rico, be and are hereby forever and perpetually enjoined and restrained from in any way enforcing or attempting to enforce against the plaintiff Bacardi Corporation of America the provisions of Sections 40 and 44 of Act No. 6 approved June 30, 1936, as amended by Act No. 149 approved May 15, 1937, and the provisions of Section 7 of said Act 149, insofar as said provisions prohibit complainant from marketing its products in Puerto Rico or shipping its products out of Puerto Rico with the Bacardi trademarks and labels attached thereto as now or hereafter authorized by the Federal Alcohol Administration, and from using its corporate name on its products; and also, from in any way enforcing or attempting to enforce against said plaintiff the provisions of Section 44(b) of said Act No. 6 as amended by said Act No. 149, insofar as said provisions prohibit the plaintiff from shipping its products to the United States or elsewhere in bulk;

That the bond in the sum of \$10,000 filed by the plaintiff in this case pursuant to the order of this court dated August 23, 1937 granting the plaintiff a preliminary injunction be and is hereby cancelled; and

That the complainant have and recover from the defendant and the interveners its taxable costs and disbursements herein to be taxed by the clerk of this court.

Dated at San Juan, Puerto Rico, this thirtieth day of June, 1938.

ROBT. A. COOPER,

United States District Judge.

PLAINTIFF'S EXCEPTION TO THE CONCLUSIONS OF LAW.

[Filed June 30, 1938.]

Now comes the plaintiff in the above entitled cause through its undersigned attorneys, and respectfully files herewith its exception to the action of the court in not including among the conclusions of law determined on June 28, 1938, the following conclusions which the plaintiff had submitted as pertinent and proper:

That Sections 40, 44 and 44(b) of Act No. 6 of June 30,

1936, as amended by Act No. 149 of May 15, 1937, are invalid as contrary to the Federal Alcohol Administration Act.

That Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937, prohibiting the use of the "Bacardi" trade-marks by the plaintiff, conflicts with the provisions of the Trade-mark Convention of February 20, 1929 between the United States and Cuba, and is invalid.

San Juan, Puerto Rico, June 30, 1938.

HARTZELL, KELLEY & HARTZELL,
by RAFAEL FERNANDEZ,
Attorneys for Plaintiff.

MEMORANDUM.

August 23, 1938, Petition of Destileria Serralles, Inc., intervener.

August 23, 1938, Order allowing appeal.

August 24, 1938, Cost bond \$500 surety, Maryland Casualty Co.

August 24, 1938, Citation on appeal issued, served on plaintiff on August 24, 1938.

August 24, 1938, Petition for appellant Rafael Sancho Bonet, Treasurer of Puerto Rico, defendant.

August 24, 1938, Order allowing appeal.

August 24, 1938, Cost bond \$500 surety, Maryland Casualty Co.

August 24, 1938, Citation on appeal issued August 24, served on complainant on August 24, 1938.

ASSIGNMENT OF ERRORS.

[Filed August 23, 1938.]

Now comes Destileria Serralles, Inc., one of the interveners in the above entitled cause by its undersigned attorneys and respectfully states that in the record, the proceedings, the evidence and the final decree entered in this case by the United States District Court for the District of Puerto Rico, there is manifest error in this, to wit:

1. That the court erred in not holding that plaintiff has no legal standing to challenge the validity of Act No. 6 enacted by the

Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session, 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Law of Puerto Rico, Special Session 1937, p. 395).

2. That the court erred in holding that rum manufactured by plaintiff in Puerto Rico may be legally sold in Puerto Rico and exported to the United States.

3. That the court erred in holding that the provisions of Section 44 of Act No. 6 enacted by the Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Laws of P. R. Special Session 1937, p. 395) prohibiting the use of certain trade-marks, labels and corporate names, constitute an unreasonable or arbitrary interference with the enjoyment of property.

4. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names are not a proper exercise of the police power by the Legislature of Puerto Rico.

5. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936 as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names violate the due process clause of the Constitution of the United States.

6. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted on May 15, 1937, which prohibit the use of certain trade-marks, labels and corporate names violate the due process clause of the Organic Act of Puerto Rico.

7. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149, enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names discriminate arbitrarily against the plaintiff.

8. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by

Act No. 149 enacted May 15, 1937, which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Constitution of the United States.

9. That the court erred in holding that the provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Organic Act of Puerto Rico.

10. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribe the size of the containers in which exportations of rum shall take place, violate the due process clause of the Constitution of the United States.

11. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribed the size of the containers in which exportations of rum shall take place, violate the due process clause of the Organic Act of Puerto Rico.

12. That the court erred in holding and deciding that Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names violates the commerce clause of the Constitution of the United States.

13. That the court erred in holding and deciding that Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, violates the commerce clause of the Constitution of the United States insofar as it prescribes the size of containers in which rum shall be exported from Puerto Rico.

14. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico to prohibit the use of certain trade-marks, labels and corporate names in regulating the manufacture and sale of rum in Puerto Rico.

15. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico in regulating the manufac-

ture of rum in Puerto Rico, to prescribe the size of the containers in which rum may be exported.

16. That the court erred in failing to hold that the provisions contained in Section 44 of Act No. 6 of June 30, 1936 as amended by Act No. 149 enacted on May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are valid as a proper exercise of the police power of Puerto Rico to protect its liquor industry.

17. That the court erred in failing to hold that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 enacted June 30, 1936, which prescribe the containers in which exportations of rum shall take place are valid as a proper exercise of the police power of Puerto Rico for the protection of its liquor industry.

18. That the court erred in failing to hold that the provisions contained in Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

19. That the court erred in failing to hold that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, which prescribe the containers in which exportations shall take place are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

20. That the court erred in granting a permanent injunction.

21. That the decree is contrary to law.

22. For all other errors apparent from the record.

Wherefore intervenor-appellant prays that said decree may be reversed and remanded with direction to proceed in accordance with the law.

San Juan, Puerto Rico, August 23, 1938.

ANTONIO J. MATTA,

J. SIFRE, JR.,

Attorneys for DESTILERIA SERRALLES, INC.,

Intervenor-Appellant.

ASSIGNMENT OF ERRORS.

[Filed August 24, 1938.]

Now comes Rafael Sancho Bonet, Treasurer of Puerto Rico, defendant in the above entitled cause by its undersigned attorneys and respectfully states that in the record, the proceedings, the evidence and the final decree entered in this case by the United States District Court for the District of Puerto Rico, there is manifest error in this, to wit:

1. That the court erred in holding that plaintiff has legal standing, to challenge the validity of Act No. 6 enacted by the Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session, 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Law of Puerto Rico, Special Session 1937, p. 395).
2. That the court erred in holding that rum manufactured by plaintiff in Puerto Rico may be legally sold in Puerto Rico and exported to the United States.
3. That the court erred in holding that the provisions of Section 44 of Act No. 6 enacted by the Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session, 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Laws of P. R., Special Session 1937, p. 395) prohibiting the use of certain trade-marks, labels and corporate names, constitute an unreasonable or arbitrary interference with the enjoyment of property.
4. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names are not a proper exercise of the police power by the Legislature of Puerto Rico.
5. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936 as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names violate the due process clause of the Constitution of the United States.

6. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted on May 15, 1937, which prohibit the use of certain trade-marks, labels and corporate names violate the due process clause of the Organic Act of Puerto Rico.

7. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names discriminate arbitrarily against the plaintiff.

8. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Constitution of the United States.

9. That the court erred in holding that the provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937 which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Organic Act of Puerto Rico.

10. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribe the size of the container in which exports of rum shall take place, violate the due process clause of the Constitution of the United States.

11. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribe the size of the containers in which exports of rum shall take place, violate the due process clause of the Organic Act of Puerto Rico.

12. That the court erred in holding and deciding that Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names violates the commerce clause of the Constitution of the United States.

13. That the court erred in holding and deciding that Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, violates the commerce clause of the Constitution of the United States insofar as it prescribes the size of container in which rum shall be exported from Puerto Rico.

14. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico to prohibit the use of certain trade-marks, labels and corporate names in regulating the manufacture and sale of rum in Puerto Rico.

15. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico to regulate the manufacture of rum in Puerto Rico, to prescribe the size of the containers in which rum may be exported.

16. That the court erred in not holding that the provisions contained in Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted on May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are valid as a proper exercise of the police power of Puerto Rico to protect its liquor industry.

17. That the court erred in not holding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 enacted June 30, 1936, which prescribe the containers in which exportations of rum shall take place are valid as a proper exercise of the police power of Puerto Rico for the protection of its liquor industry.

18. That the court erred in not holding that the provisions contained in Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

19. That the court erred in not holding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, which prescribe the containers in which exportations shall take place are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

20. That the court erred in granting a permanent injunction.
21. For all other errors apparent from the record.

Wherefore defendant-appellant prays that the decree entered herein on the thirtieth day of June, 1938 be reversed and for such other and further relief as to the court may seem just and proper.

San Juan, Puerto Rico, August 24, 1938.

B. FERNANDEZ GARCIA,
Attorney General.

ENRIQUE CORDOVA DIAZ,
Assistant Attorney General.

JESUS A. GONZALEZ,
Assistant Attorney General.

STIPULATION AS TO ONE RECORD.

[Filed December 21, 1938.]

The undersigned, all being parties to the above entitled suit, and all having obtained leave to appeal from the decree of the Honorable Robert A. Cooper, Judge of the District Court of the United States for the District of Puerto Rico, entered on June 30, 1938, enjoining defendant from enforcing the provisions of Sections 40 and 44 of Act No. 6 approved June 30, 1936, as amended by Act No. 149 approved May 15, 1937, and the provisions of Section 7 of said Act 149, and desiring to avoid multiplicity of records on appeal herein, do hereby stipulate and agree that there be one record on appeal for all the undersigned appellants and that the argument of the appeals of the undersigned appellants be heard by the Circuit Court of Appeals on the said single record.

San Juan, Puerto Rico, December 20, 1938.

B. FERNANDEZ GARCIA, *Attorney General,*
JESUS A. GONZALEZ, *Assistant Attorney General,*
Solicitors for RAFAEL SANCHO BONET,
Defendant-Appellant.

JAIME SIFRE, Jr.,

Solicitor for DESTILERIA SERRALLES, INC.,
Intervener-Appellant.

ORDER.

[Filed December 21, 1938.]

Upon stipulation of appellants Rafael Sancho Bonet and Destilleria Serralles, Inc., it is hereby ordered that there be one record on appeal for the said appellants and that the argument on appeal be heard by the Circuit Court of Appeals on the said single record.

ROBT. A. COOPER,
District Judge.

[Title omitted.]

MOTION FOR CORRECTIONS TO STATEMENT OF EVIDENCE.

[Filed January 26, 1939.]

XXIII. That all evidence, both oral and documentary of the intervenor Puerto Rico Distilling Co., appearing on pages 60 to 66 both inclusive, of the statement of evidence, be eliminated, as the said intervenor has not taken an appeal in this case and the said evidence was not in any way adopted by the defendant nor by the other intervenor.

ORDER.

[Filed February 11, 1939.]

On January 26, 1939, plaintiff-appellee, the Bacardi Corporation of America, filed a motion proposing certain corrections to the statement of the evidence filed in the above entitled cause by intervenor-appellant Destilleria Serralles, Inc.

The said parties having been heard on the said motion, all amendments and corrections asked for by plaintiff-appellee are granted and ordered made as requested, with the following exceptions:

Proposed amendment number XXIII, requesting the exclusion of all the evidence introduced on behalf of intervenor Puerto Rico Distilling Company, is denied. To this ruling plaintiff-appellee excepted.

As to proposed amendment number XXIV, requesting that

Plaintiff's Exhibit "B" be copied in its entirety, including the English text of the trade-mark Convention and protocol it will be sufficient to make reference to United States Statutes at Large (71st Congress 1929-31) Volume 46, Part 2, pages 2907 to 2977, wherein the said Convention and protocol are set forth in full.

As to proposed amendment number XXXVII, requesting that Plaintiff's Exhibit marked "Identification No. 1", namely the Memorial of the Puerto Rican rum producers to the Legislature of Puerto Rico, be transcribed in full, since said memorial forms part of the bill of complaint, a reference in the statement of the evidence to "Plaintiff's Exhibit Memorial" attached to the complaint will be sufficient.

Given at San Juan, P. R., February 11, 1939.

ROBT. A. COOPER,

United States District Judge.

[MEMORANDUM. Orders of enlargement of time for filing, settling and approval of the statement of evidence are here omitted. A. I. CHARRON, Clerk.]

[Title omitted.]

STATEMENT OF EVIDENCE.

[Filed February 24, 1939.]

Be it remembered that this cause came on for hearing on its merits before the Honorable Robert A. Cooper, Judge of the United States District Court for Puerto Rico, sitting at San Juan, Puerto Rico, the trial commencing on January 17, 1938, and continuing thereafter; the plaintiff, Bacardi Corporation of America, being represented by Messrs. Hartzell, Kelley & Hartzell, and Rafael O. Fernandez, Esq. and Jerome L. Isaacs, Esq., of counsel; the defendant, Sancho Bonet, Treasurer of Puerto Rico, being represented by Jesus A. Gonzalez, Assistant Attorney General of Puerto Rico; the intervenor, Puerto Rico Distilling Co., being represented by Miguel Guerra Mondragon, Esq.; and the intervenor

Destileria Serralles, Inc., being represented by Jaime Sifre, Jr., Esq. and Antonio J. Matta, Esq.

* Plaintiff's Case.

Plaintiff introduced in evidence the Article of Incorporation of Bacardi Corporation of America in Pennsylvania.

Admitted without objection and document marked "Exhibit A for the Plaintiff".

Plaintiff introduced in evidence a certified copy of the convention and protocol between the United States of America and other American republics concerning trade-marks, etc., signed at Washington on February 20, 1929.

Mr. Sifre: Objected to on the ground that this evidence is impertinent, incompetent and irrelevant.

The Court: Objection overruled.

Mr. Sifre: Exception.

Mr. Guerra: Same objection and same exception, your Honor.

[Document marked "Exhibit B for the Plaintiff".]

Plaintiff then introduced a certified copy of the registration of the trade-mark representing a bat in a circle, duly certified by the Department of Commerce, Registration No. 302,916 of May 2, 1933.

Received in evidence without objection and document marked "Exhibit C for the Plaintiff".

Plaintiff introduced certified copy of the registration of Compania Ron Bacardi, S.A. Registration No. 310,654, of March 6, 1934.

Received without objection and document marked "Exhibit D for the Plaintiff".

Mr. Fernandez: I want to correct a statement I made. I said the registered trade-mark was "Compania Ron Bacardi, S.A." It should be "Bacardi".

Plaintiff introduced certificate of registration of the Bacardi label and medals. Registration No. 331,459 of January 7, 1936.

Received without objection and document marked "Exhibit E for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Bacardi, Carta Blanca. Registration No. 338,241 of September 1, 1936.

Received without objection and marked "Exhibit F for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Bacardi, Carta de Oro, Registration No. 337,254 of August 4, 1936.

Received without objection and marked "Exhibit G for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Ron Bacardi Superior, Carta de Oro, being registration No. 331,-460 of January 7, 1936.

Received without objection and document marked "Exhibit H for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Bacardi y Cia. registration No. 327,649 of September 3, 1935.

Received without objection and marked "Exhibit I for the Plaintiff".

Plaintiff offered in evidence registration of the label Ron Bacardi Superior with the Executive Secretary of Puerto Rico on April 10, 1935, No. 3919; Registration of Bacardi, April 10, 1935, No. 3916; Registration of a bat in a circle, April 10, 1935, No. 3917, and Registration of Bacardi Superior, Carta de Oro April 10, 1935, No. 3918.

The above registrations are in the name of Cia. Ron Bacardi, S.A.

Received without objection and documents marked "Exhibits J", "K", "L" and "M for the Plaintiff".

Plaintiff offered in evidence certificate from the Treasury Department of the United States regarding permit to Bacardi Corporation of America No. 542, and approval of the label.

Received without objection and marked "Exhibit N for the Plaintiff".

Plaintiff introduced in evidence two new approvals of labels by the Federal Alcohol Administration dated September 1, and September 3, 1937, that is, after the date of the filing of the complaint.

Mr. Guerra: Objected to on the ground that these are permits issued after the filing of the bill of complaint.

Mr. Gonzalez: Same objection for the Government.

The Court: Objections overruled.

Messrs. Gonzalez and Guerra: Exception.

[Document marked "N-1" and "N-2 for the Plaintiff".]

Plaintiff offered in evidence certificate as to the permits of the Bacardi Corporation of America in Pennsylvania.

Received without objection and marked "Exhibit O for the Plaintiff".

Plaintiff offered in evidence certificate of registration of Bacardi Corporation of America in Puerto Rico.

Received without objection and marked "Exhibit P for the Plaintiff".

Plaintiff offered in evidence certificate No. 161 of April 6, 1936, No. 29 of July 15, 1936, and No. 56 of August 2, 1937. Said certificates being licenses issued by the Treasurer of Puerto Rico to do business in Puerto Rico.

Received without objection and documents marked "Exhibits Q", "R" and "S for the Plaintiff".

Plaintiff offered in evidence Permit No. 1-R of the Treasurer of Puerto Rico to the Bacardi Corporation of America dated July 20, 1936.

Received without objection and marked "Exhibit T for the Plaintiff".

Plaintiff offered in evidence a copy of a Memorial addressed by the rum producers of Puerto Rico to the Legislature of Puerto Rico, in February, 1937.

Mr. Sifre: Objected to on the ground that it is incompetent, immaterial and irrelevant.

Messrs. Gonzalez and Guerra: Same objection, your Honor.

[After discussion.]

The Court: I will have to sustain the objection. It makes no difference what may have been the motive. They had a perfect right to urge that upon the Legislature, if they thought it was wise; but we must determine here whether or not there is any discrimination by the Act of the Legislature.

Mr. Isaacs: Takes an exception.

[Document marked "Identification No. 1 for Plaintiff".

Admission refused.]

Plaintiff offered in evidence a contract and license agreement between Compania Ron Bacardi, S.A. of Cuba, and Bacardi Corporation of America, dated June 8, 1934.

Mr. Sifre: Objected to upon the ground that the covenant confers no right to the trade-mark which the Plaintiff is endeavoring to protect by its action and therefore this evidence is incompetent, immaterial and irrelevant.

Mr. Guerra: Same objection.

The Court: Objection overruled.

Messrs. Sifre and Guerra: Exception, please.

[Document substituted by certified copy without objection and marked "Exhibit V for the Plaintiff".]

Plaintiff introduced an amendment to the agreement marked "Exhibit V" dated December 19, 1935.

Messrs. Sifre, Guerra and Gonzalez: Same objection as was made in regard to the original agreement.

The Court: Objection overruled.

Messrs. Sifre, Guerra and Gonzalez: Exception.

Document received in evidence marked "Exhibit W for the Plaintiff".

Plaintiff introduced a duplicate original of an agreement of March 6, 1936, between Porto Rican American Tobacco Company and the Bacardi Corporation of America for the lease of the build-

ing in which the Bacardi Corporation of America has its plant in San Juan, Puerto Rico.

Received without objection marked "Exhibit X for the Plaintiff".

Plaintiff introduced in evidence certified copy of Deed No. 8 of July 22, 1936, before notary public P. Juvenal Rosa, being a lease and an option of purchase between Porto Rican American Tobacco Co. and plaintiff.

Received without objection marked "Exhibit Y for Plaintiff".

Plaintiff introduced in evidence copy of a letter addressed by the plaintiff to the Treasurer on March 31, 1936, requesting inspection of premises, issuance of certificate and fixing amount of bond under Law 38 of July 30, 1935.

Received without objection marked "Exhibit Z for the Plaintiff".

Plaintiff offered in evidence the answer of the Treasurer to the above letter dated April 6, 1936, in which the building and location were approved and the bond fixed at \$10,000.

Received without objection and marked "Exhibit AA for the Plaintiff".

Plaintiff introduced a letter of the Bacardi Corporation of America to the Treasurer requesting renewal of permits 1-R of July 20, 1936, 11-D of July 30, 1936, 55 of August 11, 1936, 16-A of September 19, 1936, and 13 of August 18, 1936.

Received without objection and marked "Exhibit AB for Plaintiff".

Plaintiff offered in evidence the answer of the Treasurer of Puerto Rico to the above letter, dated September 29, 1936, stating that under Section 45 of Law of June 30, 1936, there is no need for the renewal of permits.

Received without objection and document marked "Exhibit AC for the Plaintiff".

Plaintiff introduced a letter of the Bacardi Corporation of America to the Treasurer of Puerto Rico, dated July 16, 1936, applying for rectifying and distilling permits and challenging constitu-

tionality of Law 115 of May 15, 1936. The document offered is a copy, admitted to be correct by the Treasurer.

Received without objection and document marked "Exhibit AE for the Plaintiff".

Plaintiff offered sample of label used by National Liquor Company, Inc., Hato Rey, of the Daiquiri Coctelera rum.

Mr. Sifre: Objected to upon the ground that it is incompetent, irrelevant and immaterial. No evidence whatever has been produced which would serve as a basis for the admission of this document.

Messrs. Gonzalez and Guerra: Same objection.

Document withdrawn by Mr. Kelley, counsel for the plaintiff.

Plaintiff offered certified copies of Regulations Nos. 3 and 5 of the Federal Alcohol Administration.

Received without objection and documents marked "Exhibit AF for the Plaintiff".

Mr. JOSE M. BOSCH was then called as a witness for the plaintiff and testified as follows:

Direct Examination by Mr. FERNANDEZ.

My name is Jose M. Bosch.

Stipulated that Mr. Sancho Bonet is a citizen of Puerto Rico and of the United States and resident of and domiciled in Puerto Rico.

I am vice-president of Bacardi Corporation of America, and agent for Cia. Ron Bacardi, S.A., in the United States, and vice-president of Cia. Ron Bacardi of Cuba.

Outside of marriage in the family I had no connection or relations with Cia. Ron Bacardi, S.A., before prohibition. I became connected with the Bacardi Corporation of Cuba around February, 1931, but for 8 years before that I had a connection with it. I was in charge of all of its finances but not in an official capacity. I was a sort of unofficial financial counsel.

I was born in Santiago, Cuba, where I have resided most of my life and I have known the Bacardi family ever since I can

recall and I know that in 1862 Mr. Facundo Bacardi started the business in his own name. When he died he was still in the rum producing business and the business was carried on by his sons, Emilio and Facundo, whom I knew. Pepin I never knew. They continued running this rum producing business under the name of Bacardi and formed a partnership of my own knowledge. The three sons of Facundo Bacardi continued this rum producing business under the name of Bacardi & Company. They made Bacardi rum in its different types. During prohibition Bacardi rum was sold outside of Cuba on steamships and in different countries all over the world. I myself sold some of it in Mexico.

Before prohibition Bacardi rum was sold in the United States. I have delivered rum from the office of Bacardi Company, or rather the New York office. They paid me once 50 cents for each gallon I delivered.

That rum was presented to the public with the Bacardi label, more or less practically the same label that they are using today. There was no other designation or trade-mark, only the bat. Those trade-marks and labels and the bat designation of the Bacardi name, were placed on every container of Bacardi rum sold. When prohibition was enacted the sales of Bacardi rum continued outside of the United States. To my own knowledge in Mexico, in Shanghai, in England, in Japan, in India, in the Philippine Islands, in France, in Spain, in Germany, in Russia, always under the marks and trade-name of Bacardi. Of course Bacardi rum during prohibition was sold in Cuba and on the steamers going all over the world, to the States and all over. Sales of Bacardi rum were made on the steamers plying between Cuba and the United States.

Since the repeal of prohibition I was appointed agent for Cia. Ron Bacardi, S.A. of Cuba, in the United States and I have been acting in that capacity ever since. I am in charge of sales and advertising and sales promotion. Since that time Bacardi rum has been sold in the United States in every state except the dry states. This product has been presented to the public in the United States in bottles with the Bacardi label. In cases it has been sold through

Schenley and Schenley in turn has sold the various local distillers. None of this product has ever been sold without these trade-marks and bat design. The Bacardi trade-mark, labels and the bat design were affixed to every bottle of Bacardi rum sold in the United States.

During the first two years after repeal the advertising of Bacardi was made by Schenley, with money supplied by Bacardi and under my supervision. In other words, I had to pick out the medium, I had to approve the advertising and I had the general supervision. In the following two years I paid the advertising with money supplied by Bacardi and I picked out the medium, etc. and Schenley supervised my work. I say the first two years following repeal meaning 1934 and 1935, and 1936 and 1937 were the second two years. That system was followed in 1936 and 1937 and it is in effect today.

I was recently in New York, in my office, and I got the figures as to the amount of sales of Bacardi rum in the United States after prohibition. I sold all the Bacardi from Cuba sold in the United States to Schenley. In 1933, that is in the part from December 6, 1933, to the end of December, we sold to Schenley 15,400 cases of Bacardi; during the year 1934 I sold to Schenley 102,537 cases of Bacardi; during the year 1935 I sold to Schenley 111,625 cases; during the year 1936 I sold to Schenley 64,969 cases; during the year 1937 I sold to Schenley 87,000 cases. You see Schenley Products Company makes me a daily report of where they effect the sales of this Bacardi rum that I have sold to them and it is sold, they have sold it, all over the United States. Furthermore I have made trips, except in the dry states, among the wholesalers and state stores. I know that all of this Bacardi rum to the sales of which I have just referred, carried on it, on the containers, the Bacardi trade-marks and labels as shown by "Plaintiff's Exhibits C", "D", "E", "F", "G", "H" and "I", each of its corresponding class. For instance, the registration of Carta Blanca has been placed on the Carta Blanca rum and the registration of Carta de Oro on the Carta de Oro rum, but the bat has always been there on it. Every case bore the trade-mark or designation, the same thing.

Advertising of this Bacardi rum has been made in the United States. During the year 1934, I supervised the expenditure of \$37,643.90 in newspaper advertising. (I know of my own knowledge that Bacardi rum was advertised in the United States before prohibition) I have seen the ads in Life.

In magazines in the year 1934 we spent \$50,007.77 and in small Sunday advertisement \$392.50. These ads appeared in the Denver Post and the Hartford Courant, and the Journal of Wilmington, Delaware, the Chicago Herald, the Chicago Tribune, the Journal Transcript of Peoria, the Indianapolis Star, the Sioux City Tribune, the Louisville Courier, and the New Orleans Times-Picayune, the Baltimore Sun, the Boston Globe, the Boston Herald, Traveler, the Boston Post, the Boston Transcript, the Springfield Republican-News and Union, the Worcester, Massachusetts Post, the Detroit Free Press, and the Detroit News, the Minneapolis Tribune and St. Paul Dispatch, the St. Louis Globe Democrat, the St. Louis Post Dispatch, the Reno Gazette, the Newark News, the Newark Star Eagle, and the Trenton State Gazette.

The document that you show me is one of the Bacardi ads and it appeared in the Cosmopolitan in September, in Life, Time, Red Book, the New Yorker, and in various newspapers. You see, during the year 1934, in the magazines we advertised in Esquire, Fortune, in Harper's Bazar, in House & Garden, in Time and in many others. If you want to I can count them. Seventeen magazines in 1934. This advertisement appeared during the year 1934 and there were other advertisements similar to this appearing in those magazines in different shapes and different forms.

[This sample advertisement offered in evidence for plaintiff and received without objection as "Plaintiff's Exhibit U".]

I think there is a mistake. That is for 1935 and this other one here is for 1934. This first one was published in 1935 in the American Golfer in May; Fortune in May; Home and Field in May; House & Garden in May; Vanity Fair in May; and Vogue in May of 1934.

[The "other sample of advertising" published during the year 1934, received without objection marked "Exhibit AD for the Plaintiff".]

The Witness: This other one here is for the year 1937.

[Received in evidence without objection as "Plaintiff's Exhibit AG".]

Another form of advertising this Bacardi product in the United States was tip-ons. That was the type of advertising we used in 1936, and skirts for glasses. I had affixed to each one the number given away. This one we issued 126,000. This other is new, of 1937, we used 20,000. Of this other 1937 we used 100,000. Of this one we used 300,000.

[Documents received in evidence as "Plaintiff's Exhibits AH 1" to "4".]

The Witness: We used that type during 1936.

[Received in evidence without objection and marked "Plaintiff's Exhibit A-1".]

As to papers and magazines, where these advertisements were published and the amounts that were expended in that connection, I have only mentioned the year 1934. For the years 1935, 1936 and 1937 there were spent in newspapers as follows: In 1935, \$21,694.34, in magazines in that year \$48,199.73, and in small ads like tip-ons, and so forth, \$5,676.14. During 1936 in newspapers we spent \$18,346.88, and in magazines \$23,591.07. During 1937 there was spent \$48,185.21 and in magazines \$51,610.93.

In practically every one of these advertisements the Bacardi trade-marks and labels and the bat design were featured. There is one of course where the cocktail was advertised, and that was not shown and in all those in which the bottle did not appear the name of Bacardi certainly appeared.

The figures that I have given are only for the United States advertising. Advertising was done elsewhere but I cannot say about it of my knowledge because I have dedicated all of my time during the last four years to the United States. I have, however, seen it elsewhere. I have seen it in London where

they call it the "Cuban Spirits". All of this advertising was paid for by Bacardi & Company. None of that money of which I have been speaking was spent by the Bacardi Corporation of America. In those figures we do not include the Bacardi Corporation of America. I mean that this money was spent by the Bacardi Company of Cuba.

The reputation of Bacardi rum in the United States, and wherever else I have been, is very good.

I have had experience in opening new markets for rum, in Mexico. As to how much money would be necessary to make a brand known and acceptable to the public, I would say that varies in each territory, but you could not possibly have a brand unless you spent \$2,000,000. We are spending today in Mexico a lot of money and we have not got what we ought to have. And that is in connection with the Bacardi trade-marks which before it went to Mexico was already known the world over.

With reference to the figures and the amount of sales of rum Bacardi in the United States made by Cia. Ron Bacardi, S.A. of Cuba, to Schenley, or through Schenley, which I gave yesterday, the liquor is not really sold until it is actually drunk, but we can go and examine wholesalers and retailers and see how much liquor they have sold. I have examined Schenley's books and I have seen this, that while in 1933 we sold Schenley 15,400 cases of rum, Schenley sold 15,550 cases because of the fact that they got a loan from a wholesaler of 150 cases which they repaid the following month. In 1934 we sold to Schenley 102,537 cases but Schenley only sold 81,886 so that they had an inventory at the end of the year of 20,000 cases. In 1935 I sold to Schenley 111,625 cases but Schenley only sold 91,618, so at the end of 1935 Schenley had an inventory of 40,000 cases unsold. The reason for that is that when repeal came around everybody that was in the liquor business in the United States wanted distribution of Bacardi because the idea had been that the only thing that the American individual was going to do was to buy liquor. The actual fact was different. They did not buy as everybody pre-

sumed and that was the situation that had to be corrected, so in 1936 we sold to Schenley 64,969 cases but Schenley sold 89,392 to absorb part of the inventory which they had. In 1937 we sold to Schenley 87,000 but Schenley sold 92,774 so that reduced Schenley's inventory of Bacardi to about 8,000 cases which is a normal inventory, and in that way you will see that although in 1934 Schenley sold 81,886 cases of Bacardi, in 1937 Schenley sold 92,774 showing an increase of nearly 11,000 cases.

When I say "we sold to Schenley", I mean that I sold as agent for the Cuban company.

During the year 1934 we advertised in 55 newspapers in the United States and 17 magazines; in the year 1935 in 48 newspapers and 24 magazines; in the year 1936 in 40 newspapers and 6 magazines; during 1937 in 48 newspapers and 20 magazines. I have had occasion from time to time to visit retail liquor stores in the United States. I have been in Miami, Jacksonville, Florida, New York, Saratoga, Boston, Los Angeles, Chicago, San Francisco, Detroit, Philadelphia pretty nearly in every wet state, at different times, ever since repeal. Bacardi has a wonderful distribution. I have yet to find a place that hasn't got Bacardi. These bottles of Bacardi that I sold in all the different establishments in the United States, bear all the different Bacardi labels and trademarks. In some of those establishments this product was displayed prominently, in others, not.

In addition to these large amounts which I have stated that the Campania Ron Bacardi, S.A. of Cuba, has expended in advertising its products, other activities have also taken place on behalf of this company to present the product to the public and make it well known. I, as agent of the company, maintain an office in New York and have a staff of employees, and during 1934 we spent about \$4,000 a month in that office; in 1935, we spent \$5,000 a month. During 1936 and 1937 we spent between \$6,000 and \$7,000 a month. Those men, and myself, we call on the restaurants and hotels, package stores, and do promotion work; that is, to offer them tip-ons and table tents and in every way to pro-

mote the sale of Bacardi. Get a good display in their windows or on their shelves and visit all over the United States. Furthermore I designed a portable bar which is a little suitcase and which has a bottle of Bacardi and a cocktail shaker and lime and sugar and ice, and those employees go around teaching them how to mix Bacardi cocktails and other cocktails.

As agent for the Cuban company, Campania Ron Bacardi, S.A. of Cuba, we have always maintained a bar in New York with the exception of during these last five months, because of the fact that we moved and we had to build a new one which has just been finished today. Every afternoon we get a distinguished person and give a cocktail party to 20 or 30 persons to let them judge the quality of our products, and thereby learn to like it. We have been doing that for the last four or five years, ever since 1934. We do the same in Havana. That bar is open from five until 7.30.

The Bacardi Corporation of America has sent to me to my New York office, \$17,500 to be spent in advertising and promotion of their product. I have only spent out of that \$1700 which I have spent in sending out circulars and telegrams to the trade. We have also spent \$1524 in giving away samples, and I contracted, just before I left New York, for 100 window displays at \$10 apiece, for the promotion of the sale of Bacardi from Puerto Rico. The rest of the money will be spent as necessary. This money was sent to me by the Bacardi Corporation of America for the promotion of the sales of Bacardi from Puerto Rico and it is in that promotion that I have spent this amount of money last referred to.

I arrived in Puerto Rico around the 22nd of February 1936. I came to study the possibilities of establishing a plant for the production of Bacardi rum here in the Island. I visited the Governor of Puerto Rico, the Treasurer, the Secretary of Agriculture, practically all the high officials of the Government. I informed them of what I proposed to do in Puerto Rico and I certainly received a very enthusiastic welcome. The object of my visiting these

officials of the Government, including the Treasurer, was to study the possibilities and to find out if the Governor of Puerto Rico was desirous of having us establish a plant here.

I was assured by the Governor—

Mr. Sifre: Objected to, may it please the court.

The Court: Yes, I sustain that.

[After discussion.]

The Court: If there is any subsequent development in the testimony which would justify me in allowing this testimony, I will do so, but at present I do not see it.

[Exception by plaintiff.]

The Witness: The first thing that was necessary in order to locate in Puerto Rico was to find out if there was an appropriate building in which to locate. That building was found with the cooperation of the Federal Government. We leased that building after it was examined by the Treasury Department and declared to be fit for the installation of a rum plant. We also took an option to buy. We occupied that building. [That is the same building to which reference is made in Plaintiff's Exhibits X and Y.] I mean this Marina Building. Then after we occupied the building we asked Cuba to send us that equipment from Cuba. That was absolutely necessary for the production of good rum and we also bought in the United States and also brought from the plant we had in Philadelphia, that other equipment which had already been purchased. It is exactly the same as the Cuban one.

Part of this equipment was brought from the plant in Santiago, Cuba of Bacardi & Company, and part of it was brought from the plant of Bacardi Corporation of America in Philadelphia, and although it had never been operated some equipment had been bought from different manufacturers in the United States in accordance with the instructions as to the equipment from the Cuban company. I asked Cuba what type of equipment we should require to make here a duplicate of the Cuban plant and they gave me a list which I already knew in a way because of my

familiarity with the Cuban plant and that equipment was purchased. That is, that part of the equipment that did not refer to the actual production of rum. The actual production of rum, or rather the actual preparation of rum, is equipment that came from Cuba.

You cannot make a rum exactly like Bacardi unless the equipment is exactly like the Cuban plant because of the fact that much of that equipment requires the preparation of time and a great deal of time. We have some equipment there that is forty years old and that could only be bought from the Cuban company, if exactly the same type and quality of rum is going to be made.

As I have said, the Compania Ron Bacardi, S.A. of Cuba, sent technicians here with me to supervise the purchase of this material. I brought with me at the time of the first installation of the Bacardi plant, at the time we were just going to install the Bacardi plant in San Juan, a young man that is in charge of our plant in Cuba where he makes Bacardi rum, and he is in charge of our plant. He came with me. Immediately after that they sent me from Cuba their own master distiller. They sent me three men, experts in the preparation of Bacardi rum which they had brought out from the Cuba plant and they sent me a man expert in the bottling of rum and the general run of the plant. These men saw to it that the rum prepared here was exactly the same rum prepared in Cuba.

The master distiller is fifty-six, fifty-five or fifty-six years old and he has been with the Compania Bacardi of Cuba since he was eleven. One of the men that came from Cuba for the manufacture of rum is 44 and he has been 30 years with the company. Another man who actually does the production of rum, the manufacture of rum, I knew him in charge of the plant that Bacardi had in New York in 1918, and he was in charge of that plant. And he was an expert then. He had already been with the Bacardi Company of Cuba at least 15 years. The other man who is in charge of bottling, has been with the company of Cuba only eleven years. They have been making rum continuously. Bacardi rum,

continuously throughout their work with the company, with the exception of the boy in charge of the bottling, which is the type of work he has always done.

In connection with the purchasing or obtaining of distillate for the manufacture of Bacardi rum in Puerto Rico, it was necessary to find out in the first place if Bacardi rum could be produced in Puerto Rico. To find that out the company leased a distillery in Pennsylvania and there distilled Puerto Rican molasses and it was left to age, and it was found that the product was satisfactory. When we came here we leased a distillery and we sent samples of molasses and water to Cuba, and Cuba was satisfied with that and sent us the master distiller and his assistant to start the production or distillation of rum here in the Island. When I say Cuba, I mean the Compania Ron Bacardi of Cuba. Ever since, and periodically we send to Compania Ron Bacardi of Cuba, samples of molasses, samples of the distillate so obtained, samples of the water. They have been approved by Compania Ron Bacardi of Cuba. Some additions or repairs were necessary to this distillery that I have mentioned in order to obtain distillate that could bring a product of the same quality as the Bacardi rum manufactured by Compania Ron Bacardi, S.A. of Cuba. The master distiller when he came here found that he had to make a number of changes in the distillery and the cost was between \$8,000 and \$9,000, of which the owner of the distillery paid half and the Bacardi Corporation of America paid the other half. I purchased the necessary parts or equipment that was necessary for both repairs or additions to the distillery, with the advice of the master distiller. When I say I, I mean I, personally, acting for Bacardi Corporation of America, with the advice and assistance of the master distiller, the technician from Cuba.

Before May 15, 1936, the Bacardi Corporation of America had spent or obligated itself by debt, for \$44,290.42 here in Puerto Rico. Up to July 30, 1937, Bacardi Corporation of America had spent \$603,898.16. All of the money was spent in erecting its plant and purchasing equipment for the plant and for general ex-

penses and all inherent things, that are inherent to the business such as telephone, a little advertising; we bought a piece of land the other side of the Bay to build a distillery for which we spent \$16,679.38. We have purchased equipment which we have either here or in the hands of the manufacturer, built boats, docks.

The technicians that were sent by Compania Ron Bacardi, S.A. of Cuba, to supervise and inspect the plant have been here continuously ever since and are still here. Whenever one of them goes on a vacation somebody is sent from Compania Ron Bacardi of Cuba, to take this place.

These photographs that you now show me are photographs of the plant of Bacardi Corporation of America in San Juan. This is the front of it, this is a picture of the fourth floor, this is a picture of the fourth floor, and this is a picture of the second floor. There are four photographs.

Mr. Fernandez: These photographs were attached to the complaint as exhibits, but we want to put them in evidence.

[Photographs received without objection, marked "Exhibits AJ 1 to 4 for the Plaintiff".]

The Witness: The Bacardi Corporation of America has manufactured rum in Puerto Rico. I, acting as an officer of Bacardi Corporation of America, purchased the materials, with the advice and consent of the technicians sent by Bacardi of Cuba. All of these materials are subjected to the supervision and approval by the technician from the Ron Bacardi of Cuba. Absolutely so.

We started to distill in July. I think it was in July of 1936. The Bacardi Corporation of America made its first rum, finished product, in January of 1937. The technicians that have been sent by Compania Ron Bacardi, S.A. of Cuba, manufactured this rum in our plant. Samples of these materials and of the product are periodically sent to Cuba, to the Bacardi Company of Cuba, for the purpose of getting their approval and their comparison with the product made in Cuba. In every way we have always had their approval. I have given these technicians instructions in my capacity with the Cuban company, that the rum made here has to

be exactly the same as the rum made in Cuba. I am sure that the rum produced by our plant in Puerto Rico is made under the same process as the rum produced in Cuba by the Compania Ron Bacardi S.A. of Cuba.

This is a secret process. Bacardi rum has been tried to be imitated, but I don't know of anyone that has been able to do it yet.

Four people know the ~~process~~. It is only transmitted to the male members of the Bacardi family, and it is only transmitted to them when they have been working with the company many years and their worth has been proven.

The Court: Let us take the case of a person who works in the plant, makes the rum. I am not asking you what your secret formula is, but what is to prevent that person from learning the actual operation, what the process is? A. Because the process is divided into three or four stages and no one man sees the three or four stages, no one man is transferred from one to another state. You see our distillers are always separated from the rum plant so that the distillers cannot get together with the rum manufacturer and talk about what they do. We have never had any difficulty.

We now have a stock of 37,000 gallons of finished rum in our plant and we have over 200,000 gallons of unfinished high proof. About 340,000 gallons of the finished product will come out of those 200,000 gallons of high proof product that we have.

After the preliminary injunction was granted in this case we continued to acquire stock of the distillate because of the fact that the equipment if it gets dry, spoils, and what rum you take out you have to put in if you are going to maintain your equipment and not going to have an irreparable loss.

The situation there in regard to the stock on hand of the finished product and of the product under process, is exactly the same as, when the preliminary injunction was granted. There might be a little variation of 1,000 gallons, but mechanically it is the same.

Since the granting of the preliminary injunction we have made sales of our finished products. We have sold to Schenley during the months of November and December about 21,000, or 22,000

or 23,000 cases of rum and they have received a great deal of rum from us that is not actually in the market; yes, because due to the uncertainty we have not dared to put the rum all over the United States. So we had to build a stock in New York before we can do that, and that we have been doing, but they have already merchandise unsold about 22,000 cases. We have shipped this rum to the United States under a label approved by the Federal Alcohol Administration and not in conflict with the Insular Law, after the preliminary injunction was granted. These two, I refer to Exhibits N-1 and N-2, these are the labels we use on the product that we have shipped to the United States after the preliminary injunction was granted. Exactly.

We have a verbal contract with Schenley to buy from us 10,000 cases of rum every month. We have been living up to it and they have lived up to it with a little more. They bought two or three thousand cases more than they had to buy during the last two months. We are ready to continue shipping under this agreement. Yes, it is on the basis that we can use the Bacardi trademark and labels with the natural variations of the color of the label, and what we usually call the analysis label, which is the bottom label. We call that the analysis label because in olden times the Bacardi Company had a certificate there from the Municipal Laboratory of Madrid, Spain, that it was pure.

We have been making a profit in the sale of this rum that we have been shipping to the United States under these labels. We have been making our statement of December 31st which will show that in November we made \$50,000 and in December more or less the same amount.

As to the capacity of our plant you have to divide that in three sections. The distillery is producing today enough rum for about 16,000 or 17,000 cases per month. The plant where the rum is produced, if it worked night and day could produce more or less that same amount, but the bottling plant has a capacity of 10,000 cases per month.

As to how long it would take to double the capacity of the

whole plant, in the first place we have all the equipment practically all the equipment, purchased for a distillery; I mean for setting up our own distillery and thereby increasing the capacity because we would keep the present one also. I should say that that distillery could be ready to produce in about five or six months, but the rum plant could be brought to 17,000 or 18,000 cases per month in the course of the next 45 or 50 days. Since the bottling capacity of our plant now is less than the production capacity we have some rum on hand which we would be able to ship in bulk if we wanted to.

If we were not permitted to use the Bacardi trade-mark and labels on our product it would mean a disaster to our business. If the business was liquidated those \$603,000 that we have spent here, I doubt very much if they could bring \$200,000. Speaking as a man who has been for a considerable time engaged in the rum producing business and from the profits that we have already obtained from this business in Puerto Rico, the replacement value of this plant I believe would not be much less than we have spent which is \$602,000. As a going concern it is extremely profitable. I stated a minute ago that we have earned \$50,000 in each of the last two months, and I do not expect to see it go so smoothly because it requires a great deal of work, but this plant here should easily earn \$400,000 or \$450,000 a year, and you would have to deduct from that what has to be paid to the Bacardi Company as royalty, but as a going concern it is invaluable if you can use the trade-marks. If you cannot use the Bacardi name it is not worth much. I have been present, not so many years ago, when for the use of the brands and trade-marks Bacardi of Cuba was offered \$5,000,000; for the system of production. I mean someone was buying and it was declined.

From my experience in this business I think that the salvage value of this plant of ours would be about \$200,000 or \$250,000, so that if we are not permitted to use the Bacardi trade-marks and labels on our product we would lose about \$350,000 to \$400,000 on our investment here.

As to what would be the effect from the sale of our product, having to sell this product under another trade-mark, unknown trade-mark and not the Bacardi trade-mark and labels, this product made in Puerto Rico is sold to the retailers, to the hotels in New York today, I mean the product that we are now manufacturing under the Bacardi trade-mark, and I mention New York because New York is the state with the highest state tax; it is being sold to the hotels and restaurants for \$18.25 per case, with all taxes paid. I know of rum being sold in hotels and restaurants in New York for \$11.85. That is if you could get a market. As to how much it would cost to make this new market to open a market for those new brands, in the first place the difference in price, the amount of work you have to put in and money you have to spend to create a new market, must be considered, and you could not expect to sell more than five or six or seven or eight hundred or a thousand cases a month for many years. If we could not sell that product, I mean the whole production of our plant, the effect on that plant would be that it would have to be liquidated and take a loss. Close up and let more of the employees out.

The amount of expense of advertisement and promotion with these other trade-marks that we would have to use if not allowed to use the Bacardi trade-marks would be very large. I testified yesterday about that. I do not think it would be less than \$2,000,000 to build up a real trade-mark.

Mr. Fernandez: We want to make a motion for the correction of an error in the record. When we referred to one of the amendments yesterday, it was our intention to refer to page 18, line 8, which was in connection with adding the words "Commerce Clauses, articles so and so of the Constitution", and we misstated the page and line, the reporter took down page 8, line 7. It should be page 18, line 8.

The Witness: After we started or were in the process of installing our plant under Law 38 of 1935, I applied to the Treasurer of Puerto Rico to send an inspector to decide whether the build-

ing was in a condition to install a rum plant. He sent the inspector and the building was approved. I submitted then to the Treasurer of Puerto Rico the plans of the plant and applied for a permit. I was told that the permit was not granted until the plant was finished, that that was the customary practice here. I refer to the letter of March 31, 1936, marked "Exhibit Z for Plaintiff".

Mr. Fernandez: Mr. Bosch, as a man of experience in the rum producing business and in the production of distilled spirits and in handling the exportation and sale of these spirits, do you believe there is any reason for the measure contained in Section 44(b) of Law No. 49 of 1937 in regard to shipments in bulk?

Mr. Sifre: Objected to on the ground that Mr. Bosch while he has stated that he has been in the rum business for some time and has been agent for the Cuban company in the United States, and so forth, I do not think that he has been qualified so well as an expert in connection with what our Legislature deems necessary measures in connection with the regulation of the rum industry in Puerto Rico.

The Court: I do not think it is a matter for opinion. He may state what the effect of that would be and how it would affect his business, but it is not a matter of expert opinion at all. He may state the facts, what the effect of it is.

[Exception by the plaintiff.]

The Witness: As to the custom of the liquor business in shipping liquor—rum is sold, all liquors are sold, either packed in small packages or sold to other manufacturers in barrels. There is speculation in rum in warehouses, in which an individual can buy a certificate of a barrel of rum, provided that the fellow that sells it takes the obligation to bottle it. That is a common procedure. We sell rum in bottles and we have sold rum in barrels.

The usual containers of liquor used throughout the world are: in bottles of 1.6 ounce, 8-ounce, 12 4/5-ounce, 4/5-quart, quart, (in Europe it is litres), gallon, and amongst the trade 50-gallon barrels, and amongst the rum trade rum puncheons, 130-gallon

barrels. Indistinctly, rum is either sold amongst the trade in either 50-gallon barrels or 130-gallon barrels.

We have not made any shipments of rum in bulk since the preliminary injunction was granted. This is because at the time of the preliminary injunction I had, on my desk, an inquiry for 100,000 gallons of rum in bulk, if we took the obligation to provide that same amount for a certain number of years, and we declined it because of the Puerto Rican law, the outcome of which we do not know.

The House of Heublein, of Hartford, Conn., which bottles the Club Cocktails, have been trying to get us to sell rum in bulk for the production and sale of their cocktails with rum. They have been buying rum in bulk in Puerto Rico all these last few months until they had to discontinue because of the variation in quality.

I mean that they bought rum in bulk before this law, and also while this law is in effect. They bought from the National Liquor Company. While we were here in court in the preliminary injunction, ten barrels of rum had been shipped that day. They cannot buy rum in bottles because it would make the cocktails too expensive. They have to buy in bulk. The Club Cocktail is a famous cocktail. It is a famous brand. It sells a great deal. That would be a very desirable outlet for us, and they are perfectly willing to buy from us but we cannot sell them. It would be a desirable business for the sale of our rum in bulk now, yes, exactly. And right now we have the capacity to sell it and we have the stock.

The Court: Why don't you sell it? You have a preliminary injunction. A. Because to present this cocktail, well, it requires a great number of cases. It requires advertising, it requires promotion work, and giving away samples. We cannot do that over a period so short. We can only do that if we know we can continue doing it, because it is an investment and not an investment of a mere \$1,000.

The Court: Then in that respect the preliminary injunction was

of no value to you. *A.* In that respect the preliminary injunction was of no value to us.

In spite of the preliminary injunction in regard to Section 44(b) we have been actually losing money because we have not been able to send the merchandise to the United States in bulk. We are still losing profit because of that situation.

The minute we can go and ship rum in bulk and send it to manufacturers of cocktails in the States there are three or four who are in that business and who would be very happy to buy from us and we would be happy to sell to them, but it is a business that we cannot develop at the present time. We have made samples for Heublein, and it is a nice thing, but we cannot afford to put the mony into it unless we know that we can continue. I mean that we have already made experiments with the use of the rum that we are producing in Puerto Rico, in cocktails. It is a very good cocktail. The reason that I say that we should not ship this rum in bulk to the States is because it would require giving away samples, putting it in every advertisement of Heubleins, getting the distribution, showing the people that it is good and all that work would take a considerable amount of money. Now it would not be worth while to do that unless you would be assured that you could continue in the business for a long time. That situation is true even though we are losing profit now. The loss of profit is less than the amount of money that would be required to be spent to promote the business properly.

As to whether it is usual to ship distilled spirits or rum in one-gallon containers, we have sold rum in one-gallon containers but that is for the consumption of the public. It would be impossible to sell rum in one-gallon containers for industrial purposes, like making bottled cocktails, because of the high price that that would entail. One one-gallon container costs delivered here in Puerto Rico, 73 cents. The crate in which you will have to pack it, for three, would be 18 cents. You pack three in a case. That would be 79 cents and the bottling would cost practically as much to bottle one gallon as its costs you to bottle a 50-gallon tank, so it would be, you see, 50 gallons on that basis will surely cost

\$50, while a barrel costs \$6. These containers to which I am referring, are glass containers covered with straw, because it would be required to do that for the protection of the glass. You could not use any other kind of container, say a tin container, you could not put rum in cans. As to the reason for that—I am making an experiment with the same type of can used for beer. I have rum over here that has been in a can a year and a half. So far it has not deteriorated here, but I have the same experiment in New York and it seems that the variation in temperature, the liquor has been spoiled.

As to one-gallon containers of wood—that is impossible. That would cost you—we sell a one-gallon wooden container for \$9, so fifty of them would be \$450. Those are not very fancy ones. Those that have the face carved cost \$15 or \$16. I mean the others with the plain face, and the name "Bacardi" on the back. The smallest wooden container used in the trade is 50 gallons. As to whether other smaller containers are used sometimes—you might give away, or you might buy a one-gallon container, but that is just for personal use. It is not for the trade. It cannot be profitable to ship any of this merchandise in bulk in one-gallon containers—not if you make the container of wood, because it costs you the sum of \$450 for fifty gallons, and if glass, \$50, against the barrel which costs \$6 only.

We did not bottle any rum when Law 115 was in force. We did distill. The Bacardi Corporation of America did have a distilling permit from the Treasurer of Puerto Rico until it gave it up. I do not know the exact date we gave it up but it must have been about May of 1937. We operated the distillery up to that time, from the time we got the permit until the time we returned it. We had two permits: one for a distillery and one for warehousing, rectifying and bottling. Since we gave up the distilling permit we made a deal with Mr. del Valle to buy the distillate from him on the basis that we buy all the prime materials to be sure that they are up to the standard quality, and all the men that operate the distillery are paid by us and he only looks after the

commercial end of the business. He sees that we do not put in too many materials and do not take less rum than we should. A man designated by Campania Ron Bacardi, of Cuba, whom we pay, supervises the distillery here. I buy the materials, when I said I sent samples of molasses, etc., to Ron Bacardi of Cuba, I referred to this distilling also in Mr. del Valle's plant. Yes, exactly.

[Witness excused subject to recall for cross-examination.]

Mr. Fernandez: We want to present in evidence annual report of the Commissioner of Labor of Puerto Rico to the Governor of Puerto Rico containing official statistics on page 76 showing the number of laborers or employees employed in the rum producing industry in Puerto Rico, or in the liquor business. 549.

Mr. Sifre: May I ask counsel what is the purpose of this evidence?

Mr. Fernandez: The purpose of the evidence is to show that the liquor industry is not of public interest or concern because at the hearing of the preliminary injunction and in connection with that memorial addressed to the Legislature, the statement was made that about 1500 persons were employed in this industry and that if Bacardi Corporation of America was allowed to come in the other liquor producers would have to go out of business, and these 1500 employees would lose their employment.

The Court: I don't see what this has to do with this case.

Mr. Fernandez: Your Honor, they are endeavoring to justify this discriminatory legislation on the ground that it touches the public interest and that this industry is affected with the public interest.

The Court: When the defendant or intervenors go into that question it may become pertinent in reply, but not in chief.

Mr. Sifre: May I clear up a statement which I have made in the record? The liquor industry is affected with the public interest all over the United States to the extent that it may be subjected to regulation. It is in that respect an industry subject to governmental regulation. I just wanted to clear that up.

[Plaintiff offered in evidence certificate issued by the Treasurer of Puerto Rico dated January 18, 1938, showing importations of a number of cases of ron dominicano, Carta Blanca Brugal & Company, Puerto Plata, Republica Dominicana, bearing gold medals and the word "Brugal", and again gold medals. This importation appears to have been made of May 3, 1934.]

Mr. Sifre: May I know for what purpose this document is offered in evidence?

Mr. Fernandez: It is alleged in our complaint that this legislation has been directed against this plaintiff alone. This objection came up when the hearing was being held for the preliminary injunction and we explained the matter to your Honor and your Honor admitted the evidence, to show that Brugal & Company, a Dominican concern with trade-mark, trade-name and label known out of Puerto Rico, was producing Brugal rum in Puerto Rico before February 1, 1936, and was permitted to continue using that label and producing that rum under a label known out of Puerto Rico, in spite of the legislation which we are now attacking in this injunction.

The Court: In other words, I understand—I do not recall definitely, that the Act which you challenge here does have a proviso to the effect that any company that was producing or exporting rum with a foreign label prior to a certain date would not be included within the inhibitions of this Act?

Mr. Fernandez: Yes, sir.

Mr. Sifre: I have no objection.

The Court: Yes, I am going to admit it, not because it shows what is intended but it does throw some light on the question as to the protection of local industry, which is probably a collateral issue in this case. I am going to admit it.

[Document marked "Exhibit AK for the Plaintiff".]

Plaintiff offered in evidence and it was received without objection, a certificate issued by the Treasurer of Puerto Rico on January

18, 1938, showing the labels, trade-marks, which Compania Ron Brugal, S.A. is using on its rum manufactured in Puerto Rico. Using it now.

[Document marked "Exhibit AL for the Plaintiff".]

Certificate issued by the Treasurer of Puerto Rico on January 18, 1938, showing the labels which are being used by the National Liquor Company, Inc., of Hato Rey, Rio Piedras, Puerto Rico, on its rum, and other distilled spirits, manufactured in Puerto Rico, and the labels are attached to this certificate and to the former certificate. This is another one of the companies that were doing business before February 1st, before the law was passed. They have continued to use this label.

[Received without objection, document marked "Exhibit AM for the Plaintiff".]

Another certificate issued by the Treasurer on the same date, January, 1938, showing the distillers and rectifiers that were licensed by said department on or before February 1, 1936.

[Received without objection marked "Exhibit AN for the Plaintiff".]

Another certificate issued by the Treasurer of Puerto Rico on January 18, 1938, showing the persons and entities appearing as licensed manufacturers of distilled spirits or alcoholic beverages after February 1, 1936.

[Received without objection marked "Exhibit AO for the Plaintiff".]

Mr. Fernandez: Referring to Plaintiff's Exhibit AO above. Now there is a little ambiguity in the form of the certificate. We asked the Treasurer to give us the names of all the persons and entities that had received licenses after February 1, 1936, and although the certificate was apparently issued to that effect it is not clear as to that point, and we want to make it clear for the record, with the consent of the defendants and intervenors that this certificate is for the purpose of showing the persons and entities who has been licensed by the Treasurer of Puerto Rico since February 1, 1936.

Mr. Sifre: No objection.

Mr. Gonzalez: No objection.

Another certificate of the Treasurer of Puerto Rico issued on January 18, 1938, showing the labels which are attached to the certificate that are being used by the Compania Ron Carioca Distilling Co., of San Juan, Puerto Rico, in their product manufactured in Puerto Rico.

[Received without objection marked "Exhibit AP for the Plaintiff".]

Mr. Fernandez: We have presented in evidence your Honor, two new approvals of labels for the Bacardi Corporation of America by the Federal Alcohol Administration, and these documents which were marked "Exhibits N-1 and N-2 for the Plaintiff" should, according to the Rules of the Department, not be out of the possession of the plaintiff. We move, your Honor, to permit us to replace them with photostatic copies to which will be attached identical replicas of the labels.

[No objections by defendants or intervenors.]

Mr. Sifre: Referring to Exhibits N-1 and N-2 for the Plaintiff. May I ask if these are the labels that are being used now?

Mr. Fernandez: Yes, exactly the same.

Mr. Sifre: For your Puerto Rican product?

Mr. Fernandez: Yes, sir. Of course, Mr. Sifre, although one says "distilled and bottled by" and the other says "prepared and bottled by".

Mr. Sifre: I just had in mind that bat on the left side of the label. You are using that now on rum from Puerto Rico?

Mr. Fernandez: Yes, we are.

[After noon recess, Jose M. Bosch, recalled for further direct examination.]

The Witness: The license and agreement between Cia. Bacardi S.A. and the Bacardi Corporation of America, Plaintiff's Exhibit V and also the document marked here "Plaintiff's Exhibit W", the amendment to the agreement, are still in force. That is, the agree-

ment as thus amended is in force. We have been operating under that agreement since it went into effect.

[Plaintiff offered in evidence a certified copy of the Minutes of a meeting of Cia. Ron Bacardi, S.A., of Santiago, Cuba, duly certified by the Secretary of Cia. Ron Bacardi, S.A., and authenticated by the American Consul at Santiago, Cuba, on August 4, 1937, ratifying this license and agreement between the two companies.]

The Court: Has the contract been challenged?

Mr. Fernandez: It is only to show ratification by both companies of the contract.

The Court: You have the contract itself in evidence signed by both parties?

Mr. Fernandez: Except that the contract itself calls for a ratification.

The Court: Oh, it calls for a ratification.

Mr. Sifre: It refers to this amendment of December 13, 1935.

Mr. Fernandez: No, the one I present refers to the original contract.

Mr. Sifre: May it please the court, inasmuch as I objected to the admission of the original contract between the American company and the Cuban company, and I also objected to the admission in evidence of the amendment to that contract, I want to make the same objection to this resolution. In other words that they are incompetent, immaterial and irrelevant.

The Court: You do not raise the question as to whether they have been properly identified?

Mr. Sifre: Oh, no.

The Court: Objection overruled.

Mr. Sifre: Exception, your Honor.

Mr. Guerra: We make the same objection, your Honor.

Mr. Gonzalez: Same objection for the Government.

[The document was marked "Exhibit AQ for the Plaintiff".]

Mr. Fernandez: Now the ratification of the agreement by the

Pennsylvania corporation is attached to the certified copy of the agreement that we presented originally. We now present certificate issued by the Secretary of the Compania Ron Bacardi, S.A. of Santiago, Cuba, authenticated by the United States Consul at Santiago de Cuba, on December 21, 1937, ratifying the amendment to the agreement.

The Court: The same objections, and the same overrulings and exceptions allowed.

[Document marked "Exhibit AR for the Plaintiff".]

Plaintiff offered in evidence a certified copy of the Resolution of the Board of Directors of Bacardi Corporation of America, certified by the Secretary of the corporation and authenticated by the Proto-Notary of the Court of Common Pleas of Philadelphia County.

The Court: The same objections, and the same overrulings and exceptions allowed.

[Document marked "Exhibit AS for the Plaintiff".]

The Witness: I know that during prohibition Brugal rum was produced in Santo Domingo. After prohibition I have bought a bottle or two of Brugal rum in the States produced here in Puerto Rico. Now, that is before I came here. Before February 1, 1936, of course. After February 1, 1936, I have, of course, seen Brugal rum in every store, or in many stores, in the United States, and I have seen it bottled here, in Puerto Rico. Yes, I have seen it bottled here because they were our neighbors.

The Court: What relevancy does that have to the issue we are trying?

Mr. Fernandez: It shows, your Honor, that out of three companies that had located in Puerto Rico before February 1, 1936, two were allowed and have been allowed to use, and are now using, trade-marks.

The Court: You have already brought that out and I have allowed you to do that because it was pertinent.

Mr. Isaacs: This, your Honor, is pertinent for the purpose of

putting into evidence the trade-marks used prior to February 1, 1936. The labels are in evidence, but there is no proof of use.

The Court: From that view of it I will let it in, to show that the label or trade-mark was used.

The Witness: I bought this bottle which you now show me here in town just two or three days before the preliminary injunction, with the label appearing on it, bearing the name of "Brugal" and also the legend "Brugal Rum, Puerto Rican Rum". I was not in Puerto Rico before February 1, 1936, but I have seen them [referring to labels like these or similar to this of Brugal rum, on rum] in the United States. Of course it did not have, at least so prominent, the phrase "Puerto Rican Rum". It had the mark "Brugal". The label is the same or very similar to the one used in Santo Domingo.

[Label offered and admitted in evidence and marked "Exhibit AT for the Plaintiff".]

In 1933 this Daiquiri Coctelera rum started to be produced in Cuba. It had this label, same colors, same name, word for word. The only difference it has is that here it says that this one is distilled and bottled by National Liquor Company, Inc. of Hato Rey, Puerto Rico. The rest is exactly the same. I do not know whether this label was used by the Compania Ron Daiquiri S.A. or National Liquor Company, before February 1, 1936. I know it has been used after February 1, 1936, and I know that before February 1, 1936, that label was in use in Cuba, I mean in the United States. They have used it after February 1, 1936 on rum manufactured in Puerto Rico.

Mr. Sifre: You say that this rum is made in Puerto Rico. A. I have seen rum with a label similar to that.

Mr. Sifre: The question is if you know whether the rum in bottle seen by you was made in Puerto Rico? A. I do not know if it was made in Puerto Rico because I did not see the rum produced. I did not see the rum bottled.

The Witness: I have seen that rum at 247 Park Avenue, New York, in a liquor store, and it had there the name National Liquor

Company. It bore this legend of the National Liquor Company of Hato Rey, Puerto Rico. Yes, distilled and bottled by National Liquor Company, Inc. of Hato Rey, Puerto Rico.

[Label offered and admitted in evidence marked "Exhibit AU for the Plaintiff".]

I recognize the bottle bearing the label of Rum Carioca, distilled by American Distilling Company, Gretna, La. which you now show me. This particular bottle I bought in a liquor store in University Place between 9th and 10th Streets, back in 1936, when I was living in the Hotel Lafayette in New York. I have seen this label used for rum or a similar label bearing the name Rum Carioca, before February 1, 1936. I have purchased at various times, for experiments to examine the quality of the rum in the year 1935, when they first started to produce that rum. The bottles had a similar label. I saw that in New York. Yes, in the United States, but not elsewhere, not as I recall.

[Label offered and admitted in evidence marked "Exhibit AV for the Plaintiff", without objection.]

Referring to Plaintiff's Exhibit AP I have seen that label used in Puerto Rico after February 1, 1936. This one has been sold in Miami. I have seen it in liquor stores in Miami. Yes, it says that "Puerto Rican Rum".

I do not know of any regulations by the Treasurer of Puerto Rico under the liquor laws of Puerto Rico or under the beverages Act. I inquired in the Treasury Department. The result of my inquiry was that they had none at the time. I have not inquired in the last two or three months. I have been away. At the time they did not have any and none have been sent to my office.

[Witness excused subject to recall for cross-examination.]

*Cross Examination by Mr. JAIME SIFRE, JR., on behalf of
DESTILERIA SERRALLES.*

The Bacardi family started to produce rum in Cuba in 1862. In Santiago, Cuba. One of the plants has been there all the time but they have other plants in Mexico, France, Spain and in New

York before prohibition. The plant in Puerto Rico is owned by Bacardi Corporation of America. Under their own name they have no plant in Puerto Rico. Only four persons know the secret formula for the production of Bacardi. One of them is in Puerto Rico. I am not that one. That person is a natural person. No one else except those four know the secret formula. As far as I know no one else in the world knows this secret formula because that rum has been tried to be duplicated and it never has.

I testified this morning that the Bacardi Corporation had sent to me \$17,500 to devote to the advertising of Bacardi made in Puerto Rico. The money sent by the Cuban company has been spent for the advertising of Bacardi rum. Ever since 1937 we do not indicate where Bacardi rum is made because of the fact that we expect to advertise the rum from Puerto Rico, so now we advertise only Bacardi rum. Bacardi was well known throughout the world prior to the time when we thought to begin to advertise the Puerto Rico Bacardi. Before I came to Puerto Rico Bacardi meant in the trade the finest rum made, and it referred to Bacardi rum made in different localities. Made in Cuba. And for instance if you go to Mexico and ask a Mexican, he will tell you the Bacardi made in Mexico is the best rum made there. The Mexican plant was established around 1927. The plant in France was established long before that. I could not say exactly when. We had a plant in Spain but we do not know in what condition it is. Bacardi has put in the market the following brands: Bacardi Anejo, Bacardi 1873, Bacardi Carta de Oro, Bacardi Carta Blanca, Bacardi Consumo Corriente, Bacardi Carta de Plata, Bacardi Refino, Bacardi Carta Blanca Inglesa, Bacardi Marca Palmas. I think that is about all. The Bacardi Gold Label and the Bacardi White Label were put in the United States by Cia. Ron Bacardi through Schenley Bros. I must qualify that because before the Cuban company the Bacardi Corporation of New York made Bacardi White Label in New York. The Bacardi Gold Label was first put in the market by the Bacardi Company of Santiago Cuba. As to the Bacardi Silver Label, it is hard for me to answer who put

it in the New York market because I do not know for sure if before repeal Silver Label was, or how much for sale it was, but since repeal Silver Label has been placed in the New York market by Bacardi Corporation of San Juan, Puerto Rico, not by the Cuban company. The Cuban company is still manufacturing and producing Bacardi rum. It still sells Bacardi rum and the rum produced by the Cuban company is sold in Puerto Rico and in Continental United States now. In the trade Bacardi means a rum made by Bacardi. Bacardi of Mexico, or Bacardi of Puerto Rico or Bacardi of France, or Bacardi of Spain, because it is all made by Bacardi. That is why they send the men and select the material. It is all made by Bacardi. The Bacardi made in Puerto Rico is made by experts sent by the Cuban company, with the Bacardi Corporation of America paying their salaries, but they know how to make that fine rum and to make it exactly the same as the Cuban rum. I do not know how.

As to whether the Bacardi Corporation of America knows how to make Bacardi rum, that is a hard question for me to answer because Bacardi Corporation of America is not a person that we can ask, but I suppose that if we brought all the officers of Bacardi Corporation of America together, Bacardi of Cuba has part of them, and perhaps if you brought them all together they know how. I do not know. There is one officer of the Bacardi Corporation of America who is one of the four who knows the secret formula.

Without doubt the rum manufactured in Puerto Rico is manufactured by the Bacardi Corporation of America and actually done under the supervision of men from Cuban Bacardi who watch the quality and see that it is exactly the same.

Up to 1917 if anyone in New York and in Philadelphia asked for Bacardi he would be asking for the Bacardi made in New York. We have a plant in New York, not the Cuban company, it was the Bacardi Corporation of America with the same experts. We do not have that plant there now. When prohibition came

around that company sold all of its stock and went into liquidation.

If six months ago any man asked for Bacardi in New York or Philadelphia or Washington, he would be asking for Bacardi rum. In those three cities mentioned the rum would be made by Compania Ron Bacardi, in Santiago, Cuba, and in San Diego, California, in all probability you would get Bacardi rum made in Mexico or Mexican Bacardi.

The American company has spent money in advertising. We have spent \$1524, I mean up to December 22nd, we had spent \$1524 in giving away samples. We had spent \$1700 in various kinds of advertising. We spent money in advertising what you have in your hands.

[Document marked "Identification No. 1 for Intervenor."]

I cannot say how many years before Bacardi was started to be manufactured outside of Cuba was it sold under the name Bacardi. It was many years ago. I know that Bacardi rum produced in Spain was sold in the United States. The Mexican plant was established around 1927. I could not tell when the French plant was established. In 1921 it had been in operation for many years. Today the name Bacardi in the trade has no connection with Cuba and with the Cuban company.

Mr. Sifre: Should I understand that when the word Bacardi in connection with Bacardi rum is mentioned now it does not necessarily mean rum Bacardi manufactured in Cuba?

Mr. Isaacs: I object to that question, your Honor. What the word means is not for this witness to state.

The Witness: There is just the one problem. I have had a person ask me if Bacardi was made in Italy, if it is an Italian product, if it is a Greek product.

The Court: But that is not the question. Here is the question Mr. Sifre is asking. Suppose you go in a store where they are selling Bacardi and ask for a bottle of Bacardi. Does it necessarily follow that you are getting a Bacardi made in Cuba? A. No. You will see on the label clearly where the Bacardi is made.

The signature appearing in the document marked Exhibit No. 1 for identification for the intervenors, and which is a circular letter under the heading the Bacardi Corporation of America, is a facsimile of my signature. This advertisement [referring to Exhibit No. 1 for identification] has been distributed in Florida, in New York City, in Massachusetts, in South Carolina. I think that is all. It has been distributed with my approval.

Mr. Sifre: I am going to read from this advertisement. It says: "Bacardi gave you Gold Label; they gave you White Label; now Bacardi gives you Silver Label." What Bacardi has given that to the trade, those three marks, those three brands of rum? A. Bacardi.

Mr. Sifre: Which Bacardi? A. Compania Bacardi has presented Gold Label and White Label and now comes Bacardi Corporation of America, under the heading with a facsimile of the bottle reading very clearly, "Puerto Rican Rum" and we say "Now Bacardi gives you Silver Label". The Cuban company gave the Gold Label. They also gave the White Label. The Bacardi Corporation of America at San Juan is giving "Silver Label".

We do not say in this ad that Silver Label was given by Bacardi Corporation of America and not by Bacardi because Bacardi presents Silver Label and it indicates very clearly here so that there will be no one to misunderstand it, "Ron Superior" and in large, bigger letters "Puerto Rican Rum". Bacardi in the first two lines of this ad, where it says "Bacardi gave you Gold Label and Bacardi gave you White Label" means Bacardi produced by Cuba and the other by Puerto Rico. It is very clear.

Gold Label has been sold in the United States by the Bacardi Company of Santiago, Cuba, and White Label has been sold in the United States by Compania Ron Bacardi, of Santiago, Cuba, Silver Label is going to be sold, perhaps, by Bacardi Corporation of America of San Juan, Puerto Rico, which is indicated on the label and in the circular. This advertisement was prepared by Schenley and it was approved by me.

The Court: When you use the word Bacardi do you mean a

producing company or do you mean a process? *A.* We mean a rum produced by the family, by the Bacardi family. That is the real meaning.

The Court: But do you have any reference to a particular process by which rum is made? *A.* In our advertisement, yes; in our sales promotion, yes, the general idea is this, that everyone or nearly everyone in the production of light rum has tried to imitate Bacardi. Nobody has been able to make it.

The Court: I am not interested in that phase of it. What I want to know is when you use the term Bacardi you do not say Bacardi and Company, you say Bacardi, and then you tell counsel that the name is Bacardi Company of America. It does not say that, it says Bacardi gave you. *A.* Yes.

The Court: You say that Bacardi refers there to the Cuban company in the first two instances. *A.* Well, because I was referring to an actual production by the family, the organization which has made those two rums, and which is making this one.

Mr. Sifre: Referring again to this advertisement. I call your attention to the page that reads, in part "Make mine with Bacardi". What Bacardi is that? *A.* As much Bacardi as Silver Label, as Gold Label, as Anejo, as '73. It is all Bacardi.

The Bacardi there used also includes the Puerto Rican product. And you can see from the labels where it comes from. The labels you see are very different: one is white, one is yellow, one has the indication of Cuba and the other reads "Puerto Rican Rum".

Mr. Sifre: Will you describe any of the Bacardi labels used by the Cuban company? *A.* The label that we have been using reads "Ron Superior, distilled and bottled by Bacardi Corporation of America, San Juan, P. R." It is silver in color. It has the Bacardi bat, and underneath in what we call the analysis label, it says that it has been produced in Puerto Rico by special authority of Cia. Ron Bacardi, S.A. of Cuba. That is a yellowish label. It is printed partly in black, partly in silver, partly in gold and at the top it reads: "Puerto Rican Rum".

The American company is using the bat which is one of the Ba-

cardi trade-marks on the labels of the Puerto Rican rum. Not on every bottle because before the preliminary injunction and when we were operating here we bottled a certain number of cases and because of the fact that the Treasurer advised us that we could not use the bat we printed labels and shipped out rum that did not have the bat. From the day the preliminary injunction was granted we are using the bat.

In 1933 the Cuban company sold to Schenley 15,400 cases.

I came to Puerto Rico around February 22, 1936 to look over the territory and decide whether or not it would be desirable to establish a plant for Bacardi Rum.

When the complaint was filed in this case we were manufacturing Silvet Label in Puerto Rico. If you mean to have rum in stock and age we had another rum but we were not selling it or bottling it. At that time we were selling Ron Hatuey in Puerto Rico. Around January, 1937. At the time we filed the complaint we had already sold all the Hatuey we had bottled. We have no rum Hatuey left. But we have some Hatuey left in barrels that we could bottle if we desired.

The Cuban Company produces different classes of rum. The Puerto Rican Bacardi is exactly of the same quality as the corresponding Cuban Bacardi rum. Silver Label is the Cuban rum that corresponds to the Puerto Rican Bacardi. At the present moment the Cuban company is not producing Silver Label. I am not sure. I could not say. I have seen the labels and I have seen the bottles. I think that the Cuban company is producing Silver Label. I am the sales agent for the Cuban company in the United States and I am familiar with the various brands that the Cuban company puts in the United States market. The Cuban company is not producing and selling Silver Label in the United States. At the present moment I do not know for sure whether the Cuban company is producing and selling Silver Label. Somewhere else I have seen it. I have a bottle of Silver Label from Cuba. The American company is producing Silver Label in Puerto Rico. Silver Label is the Cuban Bacardi rum that corresponds to the Silver Label sold

by the American company. Silver Label is not sold generally [referring to Silver Label produced by the Cuban company] I mean it hasn't got a great big sale and I do not know if at the present moment they are bottling it. In all our labels . . . for instance in Havana and in Santiago, we carry the labels. I believe if anybody orders Silver Label they get it.

The Bacardi Corporation of America is not paying royalties during 1938 to the Cuban company on the sales made of Silver Label. I have spent \$1,750 already up to December 22nd and I have spent \$1,524 in giving away samples and I have contracted for 100 window displays at \$10 each, nice displays showing the Bacardi from Puerto Rico. That is about all. In the meantime in the month that has elapsed I have probably spent a few thousand dollars more in giving away samples, etc. We have spent so little money in advertising the Puerto Rican Bacardi because we have just started to sell it and we have no distribution. If you have no distribution and spend money on advertising, I believe you are pretty nearly throwing away the money. I want to convey to you the assurance that the only reason why Bacardi Company of Cuba did not make us pay a royalty during 1938 is because they know that the money that will have been spent in the royalty will have to be spent in advertisement. If we are able to work, I am quite sure that the first year I will spend \$500,000 to open a market for Silver Label Bacardi rum, Puerto Rican rum. The name Bacardi on the label helps. And the amount that the Cuban company has spent in advertising also helps decidedly. You would require to spend a great deal of money if that did not have the name Bacardi.

Since the granting of the preliminary injunction I have not exported any rum in bulk. I had at the time the preliminary injunction was applied for an interested party in buying 100,000 gallon of rum a month, but that interested party required the assurance that every month he was going to receive it, because he was going to build a plant. Since we could not give that assurance I so advised him and I turned him over to a concern manufacturing in the States. That was after the issuance of the preliminary in-

junction and as a result of conversations that we have had with Heubleins, we continued those conversations, but in view of the fact that we could not assure them that we could continue to supply the requirements, we decided to wait rather than put in a lot of money in advertising the bottled cocktail.

When I came and asked for the preliminary injunction I did not know that I could not sell rum to this concern in bulk. I felt that I could sell rum but then when it comes to the time to take paper and pencil and you work out how much it costs, then you drop it. You must also consider this, that if the preliminary injunction in respect to the use of the Bacardi name and the Bacardi trade-marks would have been denied to us but would have been granted to us with respect to shipment in bulk, we would just have shipped the goods out of Puerto Rico.

The product of the American Company, Puerto Rican Bacardi, already has a market in the United States because of the fact that Bacardi rum, Cuban Bacardi, sells and has been sold in considerable amounts in the states.

Bacardi Company of America has an agreement with Schenley to sell 10,000 cases a month provided the Bacardi has the Bacardi trade-marks and the name of the corporation. The labels and the trade-marks are those of the Cuban company that the Cuban company has authorized the American company to use. To open up a market for a new brand of rum? I was asked about that at the time of the preliminary injunction and I explained that I had tried to open a market for the sale of rum. In Mexico, where I did that work, it has taken around seven years. The Bacardi Corporation of America expects to substitute, in the United States market, the rum made in Cuba with the rum that the company is making and intends to make in Puerto Rico. The Cuban company is going to continue to manufacture Bacardi rum but just as it happened before prohibition the sale of Bacardi from Cuba disappeared completely, just as it happened in Mexico, that no Bacardi from Cuba is sold at all.

We are selling rum made by the American company at \$10.69

per case in our warehouse here in San Juan. The Bacardi rum put in the market by the American Company is sold at a lower price than the Cuban Bacardi because of the fact that this rum here does not have to pay a duty and because of the fact that with the hope of developing the rum market in the same manner that the Bacardi Company developed the rum market before prohibition, we have reduced our profits.

As to the difference, if any, between Ron Anejo and Gold Label, I testified that I am not an expert in the production or a chemist. There is a difference in taste. Today, or at least last month, we were bottling Carta de Oro that was over five years old, and Anejo is always bottled when it is over seven years old. The only difference between Gold Label and White Label is in age. There is a difference of about three years. I do not think there is much difference to speak of between White Label and Silver Label Bacardi. They are more or less of the same age. As to the difference between Palma and White Label, I do not think I have ever sold Palma, but I should think about a year and a half difference. There is a great deal of difference between Consumo Corriente and Silver Label. Corriente is only about three months old, and the Silver Label is over a year old. I could not tell you the price of Silver Label in Cuba. If you compare the price of the American Silver Label it is cheaper because we have reduced our profit. The rum Bacardi of Cuba is more expensive than the Puerto Rican rum. Cuban Bacardi is the same type of rum as the Puerto Rican Bacardi.

Mr. Sifre: Now, Mr. Bosch, I ask you if you did not testify the following at the hearing of the motion on the preliminary injunction:

"Q. Have you got any other explanation that will satisfy my doubts as to the question I asked you? Is that the only explanation you have? A. You do not know about the trade. There is always people . . . you see Rum Bacardi is pretty expensive and those people that buy that type of rum,

if they insist that they want the Cuban product they naturally are going to get it."

The Witness: Yes, but you were referring in that question, Mr. Sifre, if my memory is correct, to Hatuey rum.

I do not think that the Cuban product is of a superior quality to the Puerto Rican rum.

Mr. Sifre: I will read you the questions preceding that question, which I just read from this record, page 76:

"I thought Mr. Bosch, that you had stated that the rum Bacardi which you were going to produce was going to be exactly of the same quality as the Cuban rum? A. Yes, but Compania Ron Bacardi of Cuba make Ron Anejo, which is a seven year old rum and that could not be produced even though Bacardi Corporation of America had the right to produce it, until the time elapsed. It produces '1873' which is also seven years old, Carta de Oro, which is a five-year-old rum. You cannot hurry that. Now Carta Blanca is a younger rum, and that Puerto Rico can produce.

"Q. And does the Cuban company produce Ron Bacardi Carta Blanca? A. Yes.

"Q. Now my inquiry is directed, for instance, to that rum, and I again ask you, how do you explain the effect which the sale of such rum by you in Continental United States for a lower price than a similar rum produced and sold by the Cuban company would have on that Cuban company? A. It won't have any effect. I do not see how it can have any. They receive the same amount of money whether it is one way or whether it is the other.

"Q. But will not the Cuban company necessarily lose the market for that kind of rum when your rum can be purchased in the market for a lower price? A. I do not know. Mr. Sifre, to sell liquor it is very hard. I am going to tell you an experience. My biggest client in New York is Longchamps. They tell me that they will never buy liquor from Puerto Rico.

"Q. Have you got any other explanation that will satisfy my doubts as to the question I asked you? Is that the only explanation you have? A. You do not know about the trade. There is always people . . . you see rum Bacardi is pretty expensive, and those people that buy that type of rum if they insist that they want the Cuban product they naturally are going to get it. But whatever happens to Cuba, Cuba will always receive the same amount of money that we are receiving now, and that is why we have done this."

The Witness: Yes, I did testify that. I do not want to make any other explanation. We are producing Silver Label now. There is no difference between Silver Label and White Label. I can't pick out the difference. There is a slight difference in color. The Cuban company is producing in Cuba and selling in the United States, the White Label. When I said we do not indicate since 1937 where the Bacardi rum is made, by "we" I meant "me", personally, in my capacity as agent of Compania Ron Bacardi and agent of Bacardi Corporation of America. I place advertisements and I have them designed. And since 1937 I do not indicate where Bacardi rum is made.

Rum Bacardi is the finest Bacardi in the market. It is the best known rum in the market and it is the best rum made. It was the best rum known in the market in 1933, in 1934, and in 1935 and in 1936. Bacardi was well known in Puerto Rico and in the United States. It was made there and it was very well known.

Referring to the document marked "Identification No. 1" of the intervenor Destileria Serralles, Inc. [Exhibit J for Intervenor]. I desire to make the correction that that advertisement only has gone to the trade, to the package stores and to restaurants; that Longchamps is a chain of restaurants in New York.

Redirect Examination by Mr. ISAACS.

"Q. 1. Mr. Bosch, according to my recollection Mr. Sifre asked you whether or not your arrangements with Schenley require you to sell your rum bearing the Cuban labels, now I ask you, Mr.

Bosch whether or not that is so? *A.* No, Mr. Sifre asked me that question and I tried to convey to him that . . . or rather I understood it that what was meant was that in the label the name and trade-marks of Bacardi appear, but naturally with the indication of Puerto Rican rum and the indication that it was made in San Juan, and the indication that it was made under the control and by authority of Compania Ron Bacardi.

Redirect Examination by Mr. FERNANDEZ.

With regard to the list of companies appearing in Plaintiff's Exhibit AN which were manufacturing and distilling spirits in Puerto Rico before February 1, 1936, and whose designation or trade-mark had been used out of Puerto Rico, I know Brugal and National Liquor Company and possibly Ron Rico are those companies.

The document you are now showing me is a label of Ron Carioca corresponding to Ron Carioca manufactured here in the Marina in Puerto Rico. It is used now on the product instead of that one in evidence. It is used by Carioca Distillery and it is bottled for American Spirits, Inc.

[Label received in evidence without objection, marked "Exhibit AW for the Plaintiff".]

None of the intervenor, personally to me, have made threats about bringing suits against the Bacardi Corporation of America under Law No. 149.

Whereupon ABRAHAM FELSTEIN, was called on behalf of the plaintiff.

Direct Examination by Mr. FERNANDEZ.

My name is Abraham Felstein and I am general manager of Ron Carioca, Puerto Rico. The rum bearing the brand or name "Carioca" has never been sold outside of the Continental United States.

No cross-examination.

Whereupon JOSE MERCADO, a witness, was called on behalf of the plaintiff.

Direct Examination by Mr. FERNANDEZ.

My name is Jose Mercado and I am chief clerk of the office of the Executive Secretary.

In accordance with the summons I brought with me the files of certain registrations of Brugal and National Liquor Company. We have registration 3791 issued in the name of Juan Brugal, assigned to Brugal & Company, Puerto Rico and Dominican Republic, corporation organized under the laws of the Dominican Republic. The date is the 14th of December, 1934. The petition was filed on August 3, 1934 and the registration was granted on December 14th, 1934. The trade-mark comprises the words "Ron Brugal" and a shield. They started using that trademark in Puerto Rico in June, 1934. We have another trade-mark registered under Certificate 3792, same petitioner as 3791, date of first use in Puerto Rico July 20th, 1934, petition filed on August 10th, 1934, trade-mark registered on December 14th, 1934. The particulars of this trade-mark are "Rum Brugal" and a design comprising the Dominican flag, or flag of the Dominican Republic, together with the same shield of Brugal and the medals. This is Carta "B" and the other is Carta "D", Certificate 3793, date of first use July 20th, 1934, registered December 14th, 1934. The particulars of the trade-mark are "Ron Brugal, Extra" (Carta "D"), the shield and medals and the flag of the Dominican Republic, and San Juan Puerto Rico and Puerto Plata, R. D. Those are the Brugal registrations.

We have the Carioca registration in the name of the American Spirits, Inc., a corporation organized under the laws of Maryland, doing business at Rockefeller Center, New York City, date of first use in Puerto Rico February 19, 1936, petition filed February 21, 1936, registered July 30, 1936, under Certificate No. 4045. The particulars of this trade-mark are the words "Ron Carioca" together with the representation of eight medals, four on the right hand side and four on the left hand side, and a triangular device in gold at the foot of the label. These are medals. The trade-

mark comprises also a small label used on top or on the neck of the bottle with the words "Ron Carioca" and four medals, two on each side.

No cross-examination.

Whereupon, FRANK DORATHY, a witness, was called on behalf of the plaintiff.

Direct Examination by Mr. FERNANDEZ.

My name is Frank Dorathy and I am treasurer of Bacardi Corporation of America since April 15, 1937. Before that time I was manager of the San Juan Branch of the National City Bank of New York.

I have had occasion to work out figures regarding the shipping of rum in bulk from Puerto Rico in one gallon containers. I have checked the freight rates and costs on shipments of rum in one-gallon containers in the regular bottled cases and in shipments in barrels. The freight rate for bulk shipments, that is, in barrels, is 29 cents per cubic foot, and while the barrels may vary slightly in size they contain approximately 12.8 cubic feet. Those are 50-gallon barrels and ordinarily we would ship 45 to 48 gallons in a barrel. On the basis of 45 gallons the cost per gallon would be around eight cents, just a fraction over eight cents. On shipments in gallon containers and in the bottled goods, case goods, as they call it, the rate is 29 cents per cubic foot and the measurements work out, and of course vary according to the bottle or the shape of the gallon container, but the rate works out approximately fifteen cents per gallon of rum, maybe 14½ to 15 cents. As to how that would affect the price at which rum is sold we must, of course, take into consideration shipping costs as well as other costs. If it costs more to ship it the corresponding selling price will be higher.

As to whether rum can be sold as a business proposition in bulk in the United States, in one-gallon containers, depends on what you mean by bulk, since the Federal Alcohol Regulations define bulk containers as being larger than one gallon. We could have purchasers in the United States if we have to ship in gallon con-

tainers. I think there would be a market but it would be at a much higher price than if we were allowed to ship in fifty-gallon barrels. The gallon containers would be suitable for the wholesale and retail market, but not for further processing in the north.

Cross Examination by Mr. GONZALEZ.

Since the injunction was granted no shipments have been made in bulk by the Bacardi Corporation of America. It is less expensive to ship in bulk. Yes, we made a profit of \$50,000 in November and also the same amount in December. We still prefer to ship in bottles because our bottling plant is located in Puerto Rico, but it is possible to establish a bottling plant in another place. I did not say that we established our business on the possibility of establishing a bottling plant in another place. The preliminary injunction was to enable us to fill a demand for which there was an inquiry in our hands at that time. Inquiry for purchase of rum in bulk for making a prepared cocktail.

Mr. Fernandez: We have a document that we want to introduce in evidence. This is a certificate by the Secretary of the Senate of Puerto Rico showing the proceedings in the Senate of Puerto Rico on the approval of Law No. 149.

Mr. Sifre: What do you wish to prove by this?

Mr. Isaacs: If the court please, we have spoken from the very inception of this trial about a statute that is directed to one entity and only to one entity. Now Act No. 149 as it appears completely and finally enacted, includes only the one entity; but to bring home more clearly that the Legislature was not seeking to protect the nascent rum industry, but was seeking to keep Bacardi out, we introduced this record to show that at one stage of this bill through the House and the Senate there were two people, two entities, who were caught by the bill and could not produce rum in Puerto Rico. The Senate then sent to the House to have the bill sent back for further amendment, and it was after that that Section 49 was inserted, and then we have the complete bill.

We submit that this is of prime importance when the court is considering the effect of the statute on the one person.

The Court: Frequently the courts resort to legislative records when there is some ambiguity about the statute. For instance, a bill was considered by a committee. If there is some ambiguity about it the courts frequently resort to that record to interpret the statute; what the motive was in passing it; what the purpose was, I cannot go into it. I will have to rule it out.

Mr. Isaacs: Take an exception.

[Document marked "Identification No. 2 for Plaintiff".
Admission refused.]

[Thereupon plaintiff rests.]

Defendant's Case.

Mr. Guerra: Intervener Puerto Rico Distilling Company presents in evidence a certificate by the First Assistant Treasurer of Puerto Rico, Mr. Ramirez Vega, certifying that intervenor Puerto Rico Distilling Company is authorized to distill, rectify and warehouse distilled spirits in Puerto Rico.

[Document marked "Exhibit A for Intervenor", without objection.]

Mr. Guerra: Another certificate from the same source, to wit, the Assistant Treasurer of Puerto Rico, to the effect that intervenor has shipped from January 1, 1936 up to June 30th, 1937, 281,060.8 gallons of rum, having paid taxes to the amount of \$562,000 to the Treasurer of Puerto Rico, to show the importance of our business.

Mr. Fernandez: Objected to on the ground that it is immaterial, and irrelevant to the issues that are being heard in this case.

The Court: Objection sustained.

Mr. Guerra: Exception. Mark it for identification as refused.

[Document marked "Identification No. 2 for intervenor".
Admission refused.]

JOSE MARRERO DENIS, a witness called on behalf of intervenor Puerto Rico Distilling Company testified as follows:

Direct Examination.

My name is Jose Marrero Denis and I am connected with the local newspaper La Correspondencia de Puerto Rico. I am manager of the Circulation Department. I have brought with me the issues of La Correspondencia for March 6th, 13th and 20th of 1937. This that you are showing me is an advertisement published in La Correspondencia de Puerto Rico.

Mr. Guerra: Who has paid for this advertisement?

Mr. Isaacs: Objected to. I don't see the materiality or relevancy of this.

Mr. Guerra: Yes, indeed. It says here: "Try Hatuey, a good rum within the means of everyone, produced by Bacardi" not by the Bacardi Corporation of America. We want to show that this plaintiff came to court with unclean hands. They are trying to palm off on the public ron Hatuey as a rum made by Bacardi of Cuba.

The Court: I am going to let you introduce your advertisements but as I indicated, I think, on yesterday, I would like you to direct your attention to the suggestion that Bacardi does not mean any particular producing company, but it means a process by which an article is made. I am not saying that I have reached that conclusion, but I would like to direct counsel's attention to that thought.

Mr. Fernandez: Exception.

[Document marked "Exhibit B for Intervenor".]

Mr. Fernandez: He is going to present three of them, all the same, in different issues of the newspaper.

Mr. Guerra: Yes, your Honor, to show that it is a campaign, a regular campaign.

The Court: Do you intend to follow that up by showing that it is not made by Bacardi?

Mr. Guerra: It is made by Bacardi Corporation of America, and they should show that.

The Witness: The date of this advertisement is March 13, 1937,

and it corresponds to the advertisement in that paper. I am not prepared to answer the question as to who paid for this advertisement. The date of this paper that you are showing me is March 20th, 1937, the Correspondencia of Puerto Rico. The advertisement that you are showing me is a copy of the original copy that I have here.

Mr. Isaacs: I would like to note an objection to each of these things presented in evidence.

The Court: I will note your objection.

[Documents marked "Exhibits C, D for Intervenor".]

JOSE M. BOSCH was called as a witness on behalf of intervenor Puerto Rico Distilling Company and testified as follows:

My name is Jose M. Bosch and I am vice-president of the Bacardi Corporation of America.

I am in charge of Bacardi Corporation of America at the present time in Puerto Rico though there is also Mr. Dorathy who is the treasurer. Mr. Dorathy is my subordinate.

What you are now showing me is an advertisement of Bacardi.

Mr. Fernandez: Objected to on the ground that this is irrelevant and immaterial testimony.

Mr. Guerra: It is directed to prove that whether they publish an advertisement in the States regarding the Santiago de Cuba rum they call in Bacardi. It has that secondary name attached to it.

The Witness: But Mr. Guerra, when we public [*sic*] also an advertisement about Silver Label or send an advertisement to the trade, it has no other name but Bacardi.

The Court: I am going to admit it.

Mr. Isaacs: Exception.

[Documents marked "Exhibit E for Intervenor".]

What you are now showing me is an advertisement of Bacardi made in Cuba.

[Objected to and admitted as "Exhibit F for Intervenor".]

[Plaintiff took an exception.]

This other one is an advertisement of Bacardi which appears in Esquire in April, 1937.

Mr. Isaacs: Perhaps your Honor will allow us a blanket objection and an exception?

The Court: Yes.

[Document marked "Exhibit G for Intervenor".]

This one is an advertisement of Bacardi. It refers to Bacardi. It has no bottle. It has no indication that it is from Cuba or any other place.

[Document marked "Exhibit H for Intervenor".]

The Court: All those advertisements are authorized either by the Bacardi Corporation of America or the Cuban company? A. Yes.

Q. Who authorized this? A. This has been paid by the Cuban company.

[Document marked "Exhibit I for Intervenor".]

None of these advertisements were paid for by the American company. I remember this advertisement but not this particular one. I know this design. I had it made. This appeared, this must have appeared . . . in the first place I did not contract for this advertising. If you refer to the drawing I had it made in Mexico when I was there. It is so fine and so good that I have used it in various places. I do not know when this one appeared and I do not know who paid for it.

[Witness excused.]

Mr. Isaacs: At this time I would like to move to strike from the record the testimony of this witness on the ground stated when we made the objection, and on the additional ground that if this evidence is presented to show unclean hands there is no testimony presented to connect this advertising with the plaintiff, and if there was any such evidence it was connected with the Cuban company.

The Court: I am going to let it stand.

Mr. Isaacs: Exception.

Mr. Sifre: May it please the court I wish to present in evidence

document offered yesterday and marked "Identification No. 1 for Intervenor".

Mr. Fernandez: Objected to on the same ground.

The Court: The same ruling and exception allowed.

[Document marked "Exhibit J for Intervenor".]

Whereupon ISMAEL RODRIGUEZ was called on behalf of the intervenor Puerto Rico Distilling Company and testified as follows:

Direct Examination.

My name is Ismael Rodriguez and I am connected with the local newspaper "El Mundo" as secretary to the Managing Editor. I have brought with me the issues of "El Mundo" corresponding to the 5th of February, 1937. This document that you are showing me is a copy of this article appearing in "El Mundo" on February 5, 1937.

Mr. Guerra: I offer this article in evidence.

Mr. Isaacs: I cannot see that we have gotten to the point yet that newspaper articles can be offered against the plaintiff. That is clearly hearsay.

The Court: What is the article?

Mr. Isaacs: This starts off with the heading: "House of Bacardi plans to establish itself in Puerto Rico"; the house of Bacardi.

The Court: I cannot admit that.

Mr. Guerra: Take an exception and ask to have it marked for identification as rejected.

[Document marked "Identification No. 3 for Intervenor".]

Admission refused.

[Witness excused.]

Mr. Guerra: We wish to introduce in evidence a bottle of rum Hatuey produced by the Bacardi Corporation of America and sold in Puerto Rico at the time this law was passed and at the time this suit was brought into court. The small bottle has Bacardi blown in the glass of the bottle. It contains the medals won not by Hatuey rum but by the Cuban rum, to mislead the public.

Mr. Isaacs: Exception.

[Labels marked "Exhibits K", "L" and "M" "for Intervenor".]

[The defendants rest.]

Rebuttal.

Mr. Fernandez: In connection with this evidence that has just been submitted of the Hatuey label, we want to introduce a letter written by the Treasurer of Puerto Rico to Bacardi Corporation of America on January 27, 1937, approving that label, and attached to the letter is the approval of that same label, with the medals, by the Federal Alcohol Administration.

[Document marked "AX for the Plaintiff".]

The above is all the evidence necessary for a review of the rulings assigned as errors on this appeal.

Wherefore, Destileria Serralles, Inc., intervenor and appellant prays that the above statement of evidence be settled, approved and allowed by this Honorable Court as a true, full, correct and complete statement of all the evidence taken and given at the trial of said cause for use on the appeal taken to the Circuit Court of Appeals for the First Circuit.

San Juan, Puerto Rico, November 28, 1938.

ANTO. J. MATTÀ,

J. SIFRE, JR.,

Solicitors for Intervenor-Appellant

DESTILERIA SERRALLES, INC.

Service of the foregoing proposed statement of evidence and receipt of a copy thereof is hereby acknowledged this twenty-eighth day of November, 1938.

HARTZELL, KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Solicitor for Plaintiff.

EXHIBIT A FOR PLAINTIFF.

Commonwealth of Pennsylvania Department of State

ARTICLES OF INCORPORATION

To the Department of State:

Commonwealth of Pennsylvania:

In compliance with the requirements of the "Business corporation Law", (Act No. 106), approved the 5th day of May A. D. 1933, the undersigned all of whom are citizens of the United States, desiring that they may be incorporated as a business corporation, do hereby certify:

1st.-The name of the corporation is Bacardi Corporation of America.

2nd.-The location and post office address of its initial registered office in this Commonwealth is 946-964 North Delaware Avenue, Philadelphia, Philadelphia County.

3rd.-The purpose or purposes of the corporation are:

The manufacture, production, distillation, redistillation, development, rectification, blending, mixing, purifying, recovering, flavoring, denaturalization of alcohol or alcoholic liquid for beverage, industrial and other purposes; to buy, sell, trade and deal in, either at wholesale or at retail, export, import, hold, use, distribute, store and warehouse alcohol and alcoholic liquors for beverage, industrial, and other purposes, either as principal, agent or factor.

4th.-The term of its existence is Perpetual.

5th.-The authorized capital stock of the corporation is \$100,000.00 divided into 1000 shares of the par value of \$100.00 each, all of one class.

6th.-The amount of paid in capital with which the corporation will begin business is \$500.00.

Note: There should be set forth the number and par value of all shares having par value, the number of shares without par value, and the stated capital applicable thereto. If the

shares are to be divided into classes, a description of each class, and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights granted to, or imposed upon, the shares of each class.

7th.—The names and addresses of the first directors and their terms of office are:

Name	Address	Term of Office
William H. Hoodless	4604 Osage Avenue Philadelphia, Pa.	One year or until the next annual meeting of stock holders.
Pedro P. Polakoff	5618 N. Camac St. Philadelphia, Pa.	One year or until the next annual meeting of stock holders.
H. Edgar Barnes	1040 Indian Creek Rd. Overbrook, Penna.	One year or until the next annual meeting of stock holders.

8th.—The names and addresses of the incorporators and the number and class of shares subscribed by each are:

Name	Address	Number and class of Shares
William H. Hoodless	4604 Osage Avenue Philadelphia, Pa.	3 shares
Pedro P. Polakoff	5618 N. Camac St. Philadelphia, Pa.	1 share
H. Edgar Barnes	1040 Indian Creek Rd. Overbrook, Penna.	1 share

WILLIAM H. HOODLESS [SEAL]
PEDRO P. POLAKOFF [SEAL]
H. EDGAR BARNES [SEAL]

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Before me, a Notary Public in and for the county aforesaid, personally came the above named, William H. Hoodless, Pedro P. Polakoff, and H. Edgar Barnes, who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office the 24th day of April, A. D. 1934.

Lillian M. Fornan,

[NOTARIAL SEAL]

Notary Public

My Commission Expires March 9, 1935.

Approved and filed in the Department of State on the 24th day of April, A. D. 1934. Richard J. Beamish

Secretary of the Commonwealth.

Charter Book No. 335—page 43.

Commonwealth of Pennsylvania Department of State
(State Seal)

To all to whom these Presents shall come, Greeting:

Whereas, in and by the Business Corporation Law (Act No. 106), approved the 5th day of May, Anno Domini, one thousand nine hundred and thirty-three, the Department of State is authorized and required to issue a

Certificate of Incorporation

evidencing the incorporation of a business corporation organized under the provisions of that law.

And whereas, the stipulations and conditions of that law have been fully complied with by the persons desiring to incorporate as

Bacardi Corporation of America

Therefore, Know Ye, that subject to the Constitution of this Commonwealth, and under the authority of the Business Corporation Law, I do by these presents, which I have caused to be sealed

with the Great Seal of the Commonwealth, create, erect, and incorporate the incorporators and the subscribers to the shares of the proposed corporation named above, their associated and successors, and also those who may hereafter become subscribers or holders of the shares of such corporation, into a body politic and corporate in deed and in law by the name chosen and herein before specified, which shall exist perpetually and shall be invested with, and have and enjoy all the powers, privileges, and franchises incident to a business corporation and be subject to all the duties, requirements, and restrictions specified and enjoined in and by the Business Corporation Law and all other applicable laws of this Commonwealth.

Given under my hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this 24th day of April, in the year of our Lord one thousand nine hundred and thirty-four and of the Commonwealth the one hundred and fifty-eighth.

RICHARD J. BEAMISH,

[GREAT SEAL]
I-J-No. 5522.

Secretary of the Commonwealth.

Commonwealth of Pennsylvania Department of State
Office of the Secretary of the Commonwealth

Harrisburg, May 25, 1937.

Pennsylvania: ss.

I do hereby certify, that the foregoing and annexed is a full, true and correct copy of Articles of Incorporation of the "Bacardi Corporation of America", also copy of Certificate of Incorporation issued thereon, as same appear on record in this Office.

I further certify, that a careful search of the records of this Department has failed to disclose any dissolution proceedings having been filed relative to said corporation, and so far as the records show, Bacardi Corporation of America appears to be a subsisting corporation of this Commonwealth.

In testimony whereof, I have hereunto set my hand and caused

the seal of the Secretary's Office to be affixed, the day and year above written.

RAY C. WEBER,

Deputy Secretary of the Commonwealth.

[Seal Secretary of the Commonwealth Pennsylvania]

I-K-No. 321.

Office of the Secretary of the Commonwealth of Pennsylvania

Harrisburg, May 25, 1937.

Pennsylvania: ss:

I, David L. Lawrence, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do hereby certify, that the attestation or certificate hereunto attached is in due form and made by the proper officer, and that Ray C. Weber whose name is subscribed thereto, was at the time of subscribing the same Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

DAVID L. LAWRENCE,

[GREAT SEAL]

Secretary of the Commonwealth.

EXHIBIT B FOR PLAINTIFF.

United States of America

[SEAL]

Department of State

To all to whom these Presents shall come:

Greeting:

I certify that the document hereunto annexed is a true printed copy of the convention and protocol between the United States of America and other American Republics concerning trade-marks and commercial protection and registration of trade-marks, signed at Washington, February 20, 1929, as certified to the Government

of the United States by the Pan American Union, Washington, D. C., in accordance with Article 37 of the convention, and Article 19 of the Protocol.

In testimony whereof, I, Cordell Hull, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Chief Clerk and Administrative Assistant of the said Department, at the City of Washington, in the District of Columbia, this 11th day of May, 1937.

CORDELL HULL

Secretary of State.

By: (Name Illegible)

Chief Clerk and Administrative Assistant.

[Seal of the Department of State of the United States of America]

Attached to the foregoing by a pink ribbon is a printed pamphlet consisting of seventy-eight printed pages, being the

General Inter-American Convention for Trade Mark and Commercial Protection signed by the respective Plenipotentiaries of the United States of America, Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua and Honduras, at Washington on the twentieth day of February, one thousand nine hundred and twenty-nine, and a Protocol on the Inter-American Registration of Trade Marks signed on the same day by Plenipotentiaries of the said countries except Uruguay, Chile and Guatemala, as Proclaimed by the President of the United States of America.

Said trade-mark convention is not copied in full since it appears from the United States Statute at Large, 71st Congress 1929-1931, Vol. 46, part II, pages 2907-2977.

EXHIBIT C FOR PLAINTIFF.

390

Department of Commerce United States Patent Office

To all Persons to whom these Presents shall come: Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Trade Mark Registered to Compania Ron Bacardi, S. A. May 2, 1933. Number 302,916

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord nine hundred and thirty-second and of the Independence of the United States of America this one hundred and sixty second.

CONWAY P. COE,

Commissioner of Patents.

[Seal Patent Office United States of America]

Attest: D. E. Wilson,

Chief of Division.

TRADE MARKS,

Class 49, Distilled Alcoholic Liquors

T. M. Serial No. (Series of 1905) Trade Mark No. 302916

331492 Registered May 2 1933

Act of Feb. 20, 1905

Name Compania Ron Bacardi, S. A. of Santiago de Cuba.
State of Cuba.

For Rum

Application filed complete Oct 24 1932

Examined and passed for publication (Signature Illegible) January 26, 1933

Examined for registration (Signature Illegible) Apr. 3 1933

Notice of Allowance Apr. 4, 1933

Application for renewal filed

Examined for renewal Renewed:

Representative John Iimirie Stewart Maurice

Attorney John Iimirie Munsey Bldg. City see paper No. 4

Associate attorney

Trade mark: No claim is made to the words "Trade Mark" appearing on the drawing.

Merchandise Rum

Claims use since Jan. 1915

Published in O. G. Feb 21 1933 U. S. Patent Office

Mail Division Oct 24 32 U S Patent Office

Application No. 331492 U S Patent Office

PETITION, STATEMENT AND POWER OF ATTORNEY.

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a Company duly organized under the Laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street,—Santiago de Cuba City, Republic of Cuba, has adopted and use the trade mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic Liquors, and present herewith five specimens showing the trademark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, number 30,639, January 12, 1930.

John Iimirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.



The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON-BACARDI, S. A.

By Pedro E. Lay, Vice-President.

[SEAL]

331492

DECLARATION.

Republic of Cuba, Province of Oriente, Municipality of Santiago De Cuba.

Consulate of the United

States of America, ss:

Pedro E. Lay, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes said Company to be the owner of the trade-mark sought to be registered, that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in identical form or in any such near resemblance thereto as might be calculated to deceive; that the said trade-mark has been registered in the Republic of Cuba on the 12 January 1930, under the number 30,639; that the description and drawing presented truly represent the trade-mark to be registered; and that the specimens show the trade-mark as actually used upon the goods.

[SEAL]

PEDRO E. LAY

Subscribed and sworn to before me, at Santiago de Cuba, Republic of Cuba, this 28th day of September, 1932.

Edwin Schoenrich,

[SEAL]

Consul of the United States of America.

Consular Serial No. 625; \$2.00 Fee Prescribed.—Fee Stamp affixed to this document. (Cancelled Stamp)

Department of Commerce

United States Patent Office Washington

Mills) F

Please find below a communication from the Examiner in Charge of this application.

THOMAS E. ROBERTSON,

Commissioner of Patents.

UNITED STATES PATENT OFFICE

COMPANIA RON BACARDI, S. A., OF SANTIAGO DE CUBA, CUBA

ACT OF FEBRUARY 20, 1905

Application filed October 24, 1932. Serial No. 331,002.



STATEMENT

To the Commissioner of Patents:

Compañia Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and present herewith five specimens showing the trade-mark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

Applicant is the owner of international registration No. 172, June 29, 1920, and U. S. registration No. 284,224 to 284,228, inclusive, June 16, 1931.

No claim is made to the words "Trade Mark" appearing on the drawing.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, Number 30,639, January 12, 1930.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoint John Imirie, of Munsey Building, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

[L. S.] **COMPANIA RON BACARDI, S. A.**

By PEDRO E. LAY.
Vice President.

Applicant: Compania Ron Bacardi, SA Ser. No. 331,492

Filed Oct. 24, 1932 For Trade Mark.

John Iimirie, Munsey Building, Washington, D. C.

Mailed Nov 3—1932

A certified copy of the foreign registration is requested filed with the papers in this case.

If claimed, ownership of the following registration is requested set up in the state:

International No. 172, June 29, 1930;

U. S. 284,224 to 284,228, inclusive, June 15, 1931.

The following disclaimer is suggested entered in the statement:
No claim is made to the words "trade Mark".

When these informalities have been adjusted the mark may publish. MILLS

[A bat within a circle]

Trade-marks Jan 25—1933 U. S. Patent Office
In the United States Patent Office

In re application Compania Ron Bacardi, S. A. Trademark,
Filed October 24, 1932, Serial No. 331,492 Div.

Hon. Commissioner of Patents, Washington, D. C.

Sir:—This amendment is responsive to the official action of November 3, 1932.

In the statement insert:

Applicant is the owner of International Registration No. 172, June 29, 1920, and U. S. Registration No. 284,224 to 284,228, inclusive, June 16, 1931.

No claim is made to the words "Trade Mark" appearing on the drawing.

A certified copy of applicant's Cuban registration is filed here-with. Respectfully submitted,

COMPANIA RON BACARDI, S. A.

By John Iimirie

331492-A

January 24, 1933.

Luis Testar Y Font, Acting Chief of the Division of Copyrights,
Trade-Marks and Patents of the Agriculture, Commerce and
Labor Department of the Republic of Cuba,

Certifies:

First: That on January 4, 1930, there was issued in favor of Compania Ron Bacardi, S. A., certificate of renovation number Thirty Thousand Six Hundred and Thirty-nine, corresponding to the trade-mark, without denomination to distinguish rum, said renovation being effective from the twelfth of January of the said year.

Second: That the design hereinafter affixed hereto is exactly the same as the said trade-mark.

[Bat in a Circle]

Trade Mark

Third: That the aforesaid trade-mark is at present in full force and effect.

And on petition of Dr. Carlos Garate Bru, on behalf of Compania Ron Bacardi, S. A. I issue these presents approved by the Assistant Secretary of the Department, at Havana, on the sixth day of January, Nineteen Hundred and Thirty-three.

Signature Illegible

Approved: Signature Illegible Asst Secretary.

Trade mark Division 237

Paper No. 3

Department of Commerce
United States Patent Office Washington

John Imirie, Munsey Building, Washington, D. C.

The application for the Registration of a Trade-mark filed by Compania Ron Bacardi, S. A. Oct. 23 1932 Serial No. 331,492, in Class 49 has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Feb 21
1933

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time for Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

THOMAS E. ROBERTSON,

Commissioner of Patents

331492-7.

No. 331 492

Department of Commerce
United States Patent Office Washington

Mailed Apr 4 1933

Compania Ron Bacardi S. A.

Sir: Your application for registration of trade-mark for rum Registered May 2-1933 has been examined and allowed.

The Certificate of Registration will be issued, and forwarded to you, as soon as practicable in due order of business.

Very respectfully,

THOMAS E. ROBERTSON

Commissioner of Patents

John Imirie Munsey Bldg. Washington, D. C.

331-492-8

Registered May 2, 1933

Trade-Mark 302,916

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba.

Act of February 20, 1905

Application filed October 24, 1932. Serial No. 331492

[Bat in a Circle]

STATEMENT

To the Commissioner of Patents:-

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum in Class 49, Distilled alcoholic liquors, and present herewith five specimens showing the trade-mark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

Applicant is the owner of international registration No. 172, June 29, 1920, and U. S. Registration No. 284,224 to 294,228, inclusive, June 16, 1931.

No claim is made to the words "trade-Mark" appearing on the drawing.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, Number 30,639, January 12, 1930.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoint John Imirie, of Munsey Build-

ing, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alteration and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.

(L.S.)

by Pedro E. Lay, Vice-President

EXHIBIT D FOR PLAINTIFF.

No. 4 Appt. of Rep.

Letterhead of Compania Ron Bacardi, S. A. Santiago de Cuba

January 28th, 1937

Commissioner of Patents Trade Mark Division Washington, D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceeding affecting the right to ownership of trade mark No. 302916 registered to the undersigned on May 2nd, 1933, brought under the laws of the United States, may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA RON BACARDI, SA

331 429-9

By Jose A. Bosh, Vice-Pres.

Classification

Contents:

Application O. K. papers. Briefed.

1. Letter Nov. 3—1932

2. Amdt A and for Reg. Cert. Jan. 24, 1933.

3. No. of P. Jan. 27 1933

4. Appt. of Rep.

331 492-10

Department of Commerce

390

United States Patent Office

To all Persons to whom these Presents shall come, Greeting:
This is to certify that the annexed is a true copy from the rec-

ords of this office of the File Wrapper and Contents, in the matter of the Trade Mark Registered to Compania Ron Bacardi, S.A., March 6, 1934. Number 310654.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States of America the one hundred and sixty-second.

CONWAY P. COE,
Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division.

Class 49 Distilled Alcoholic Liquors T. M. Serial No.

(Series of 1905) 343 592 Act of Feb. 20, 1905

"Bacardi" Case A Trade-Mark No. 310 654 Mar. 6, 1934

Name Compania Ron Bacardi, S. A.

of Santiago de Cuba

State of Cuba

For Rum

Application filed complete Nov. 13, 1933.

Examined and passed for publication A. W. G. Nov. 30-1933.

Examined for registration A. W. G. Feb. 5-1934.

Notice of Allowance Feb. 6-1934.

Representative John Imirie (Stewart Maurice) (149 Broadway, N. Y.)

Attorney John Imirie—Munsey Bldg. City [Note paper No. 2]

Merchandise Rum

Claims use since 1862

Published in O. G. Dec. 26-1933. U. S. Patent Office.

Under Ten-year Proviso

Nov. 13-33-84306 K-Check-\$15-00

Mail Division Nov. 13-33. U. S. Patent Office

John Imirie, Solicitor of Patents
Munsey Building 1329 E. St. Northwest

Washington, D. C., November 10, 1933.

Hon. Commissioner of Patents, Washington, D. C.

Sir: Enclosed please find papers for an application for registration of a trade-mark in the name of Compania Rum Bacardi, S. A., Case A.

Applicant has obtained a Cuban registration, No. 30,513 a certified copy of same being in the file or registration No. 285,308 and the Examiner is referred to registration No. 285,308 for such copy.

Respectfully,

Enc. I:C

JOHN IMIRIE.
343 592-1.

T. M. 654

Application No. 343,592.

Case A
Mail Division
Nov. 13-33
U. S. Patent Office.

PETITION AND STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba, Cuba, and doing business at Aguilera Baja, 32, Santiago de Cuba,

has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since 1862. The trade-mark is applied or affixed to the bottles or to

the boxes containing the same, by means of labels having the mark printed thereon.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905, and such use has been exclusive.

Applicant is the owner of International Registration Nos. 172, dated June 29, 1920; 176, dated June 29, 1920; 503, dated June 30, 1921; and U. S. registrations Nos. 284,228 dated June 16, 1931; 284,227 dated June 16, 1931; 302,916 dated May 2, 1933; 302,976 dated May 2, 1933; 284,226 dated June 16, 1931; 284,225 dated June 16, 1931; 284,224 dated June 16, 1931; and 285,308 dated July 21, 1931, and 20,172 dated September 29, 1931.

Said trade-mark has been registered in the Republic of Cuba, No. 30,513, April 30, 1929.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice

Note paper No. 2. 343 492-2 - 127
of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,
By Luis J. Bacardi, Vice-President.
343 592. 3-

DECLARATION

City of Washington

District of Columbia ss;

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the company, the applicant named in the

foregoing statement; that he believes the foregoing statement is true; that he believes said company is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark has been registered in the Republic of Cuba, on April 30, 1929, No. 30,513 that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

LUIS J. BACARDI

Sworn to and subscribed before me, a notary public, this 27th day of October, 1933.

Elsie L. Leishear

Notary Public

343 592-4-

[NOTARIAL SEAL]

Department of Commerce
United States Patent Office Washington

John Imirie Munsey Bldg. Washington, D. C.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A. Nov. 13, 1933, Ser. 343,592, in Class 49, has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks approved February 20, 1905. The mark will be published in the Official Gazette of Dec. 26, 1933.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefore, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE

Commissioner of Patents.

343592 - 5 -

No. 343,592.

Department of Commerce
United States Patent Office Washington
Mailed Feb. 6-1934.

Compania Ron Bacardi, S. A.,

Sir: Your application for registration of trade-mark for rum Registered Mar. 6, 1934 has been examined and allowed.

The Certificate of Registration will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE

Commissioner of Patents.

John Imirie Munsey Bldg. Washington, D. C.

343 592 - 6 -

Registered Mar. 6, 1934

Trade-Mark 310,654

United States Patent Office

Compania Ron Bacardi, S. A., Santiago de Cuba, Cuba

Act of February 20, 1905

Application November 13, 1933, Serial No. 343,592.

BACARDI STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba,

Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since 1862. The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905, and such use has been exclusive.

Applicant is the owner of international registration Nos. 172, dated June 29, 1920; 176, dated June 29, 1920; 503, dated June 30, 1921; and U. S. registrations Nos. 284,228 dated June 16, 1931; 284,227 dated June 16, 1931; 302,916 dated May 2, 1933; 302,-976 dated May 2, 1933; 284,226 dated June 16, 1931; 284,225 dated June 16, 1931; 284,224 dated June 16, 1931; and 285,308 dated July 21, 1931, and 20,172 dated September 29, 1891.

Said trade-mark has been registered in the Republic of Cuba, No. 30,513 April 30-1929.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Luis J. Bacardi, Vice-President.

Letterhead of Compania Ron Bacardi, S. A.
Santiago de Cuba, January 29th, 1937.

Commissioner of Patents, Trade Mark Division, Washington,
D. C.

Dear Sir: The undersigned hereby designated Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade mark No. 310654 registered to the undersigned on March 6th, 1934, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA "RON BACARDI" S. A.,
By J. M. Bosch, Vice-President.
343 592-7

Classification 49

Contents: Application OK papers Briefed

1. N. of P. Dec. 1, 1933 a Appt. of Rep. Mar. 13-1937-
Trade-Marks Class 49—Distilled Alcoholic Liquors

EXHIBIT E FOR PLAINTIFF.

Department of Commerce 390
United States Patent Office

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents in the matter of the Trade Mark Registered to Compania Ron Bacardi, S. A. January 7, 1936. Number 331,459.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this third day of April, in the year of our Lord one thousand

nine hundred and thirty-six and of the Independence of the United States of America, the one hundred and sixtieth.

CONWAY P. COE,

[SEAL]

Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division.

T. M. Serial No. (Series of 1905) 359 539

Trade-Mark No. 331 459 Registered Jan. 7-1936.

Act of Feb. 20-1905.

Name Compania Ron Bacardi, S. A.

of Santiago

State of Cuba

For Rum

Application filed complete: Dec. 21-1934.

Examined and passed for publication F. A. Richmond, Oct. 3-1935.

Examined for registration F. A. Richmond, Dec. 9-1935.

Notice of allowance Dec. 10-1935.

Examined for renewal Pg. Renewed Pg.

Representative John Imirie.

Attorney John Imirie Munsey Bldg. City.

Under Ten-Year Proviso

Trade-Mark: The drawing is lined in gold.

Merchandise: Rum.

Claims use since 1889.

Published in O. G. Oct. 29-1935 U. S. Patent Office

No. 359 539.

PETITION AND STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and use the trade-mark shown in the

accompanying drawing for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments thereto, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President

359 359-1-

DECLARATION

Republic of Cuba, Province of Oriente,
 Consul of the United States of America
 at Santiago de Cuba, ss:

Pedro E. Lay, being sworn, deposes and says, that he is Vice-President of the company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said company is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in identical form or in any such near resemblance thereto as might be calculated to deceive; that an application for registration of said trade-mark has been filed in Cuba, on October 27, 1934; that the description and drawing presented duly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

[SEAL]

PEDRO E. LAY

Subscribed and sworn to before me, at Santiago de Cuba, Cuba,
 this 21st day of November, 1934.

Harry W. Story

Vice-Consul of the United States of America

Service No. 730—Fee \$2-00.

[CONSULAR SEAL]

Cancelled Fee Stamp \$2-00

359 539-2

Department of Commerce
 United States Patent Office Washington

Jen/F.

Please find below a communication from the Examiner in charge
 of this application Conway P. Coe Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.
Ser. No. 359,539
File Dec. 21, 1934.
For Trade-mark

Mailed Mar. 9-1935

John Imirie Munsey Building, Washington, D. C.

Applicant is required to file a certified copy of the corresponding mark when registered in Cuba. Paragraph 3 of the statement should then be charged in accordance with the registration data.

Paragraph 2 of the statement is not understood, particularly in view of the alleged date of use of 1901 of the mark in its present form.

Applicant should disclaim all wording with the exception of "Carta Blanca", "Bacardi", "Bacardi y Cia", and "Establecidos en 1862".

Registration is refused in view of the following registered marks:

- 284,224 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,225 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,228 Compania Ron Bacardi, S. A., June 16, 1931;
- 302,916 Compania Ron Bacardi, S. A., May 2, 1933;
- 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

359 539-3.

359,538/2

If applicant is the present owner of these registrations, it should be made to so appear in the statement.

("Carta Blanca Superior", etc.) C. N. G.

F. A. RICHMOND,

Examiner.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-mark Filed December 21, 1934.

Serial No. 359,539 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of March 9, 1935, received.

In the statement, change "1901" to "1889"; line 12, after "mark" insert "with the exception of the medal awarded in 1900"; after line 13, insert:

"The drawing is lined to represent the color gold."

Applicant is the owner of the following registrations:

284,224 Compania Ron Bacardi, S. A., June 16, 1931;

284,225 Compania Ron Bacardi, S. A., June 16, 1931;

284,228 Compania Ron Bacardi, S. A., June 16, 1931;

302,916 Compania Ron Bacardi, S. A., May 2, 1933;

310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

In the statement, line 15, after "1934" change the period to a comma and insert "and was granted August 14, 1935, No. 54,838".

A certified copy of the Cuban registration is filed herewith.

Remarks:

Since the mark is claimed under the ten year clause of the Act, it is not believed necessary to disclaim the wording as suggested by the Examiner.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

September 27, 1935.

359 539-5.

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application December 31, 1904, Serial No. 250,000



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 264,234 Compania Ron Bacardi, S. A., June 16, 1931; 264,235 Compania Ron Bacardi,

S. A., June 16, 1931; 264,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Imlie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imlie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO H. LAY,
Vice-President.

54838

Doctor Ramon Alonso y Padrol, Director of Trade-Mark & Patents of the Commerce Department of the Republic of Cuba.

[SEAL]

Aug. 14-35.

Certifies: First: That in accordance with the records in this office, it is shown:

That on the fourteenth of August, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-four Thousand Eight Hundred and Thirty-eight, corresponding to a trade-mark made up of a label formed by the joining of two marks protected under certificates Nos. 30,044 and 42,433, called "Bacardi y Cia.", to distinguish rum and all kinds of wines, liquors and beers, the design of which is exactly the same as the one hereinafter affixed.

[Facsimile of Label]

Seal: Commerce Department Division of Trade-Marks & Patents

Second: That the said trade-mark is not in full force and legal effect.

And on the petition of Dr. Carlos Garate Bru, on behalf of Compania Ron Bacardi, S. A., this certificate is issued and approved by the Assistant Secretary of the Department at Havana, on the thirteen day of the month of September, Nineteen Hundred and Thirty-Five.

Dr. R. ALONSO PADROL.

Approved: (Signature illegible)

Assistant-Secretary

[SEAL]

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-mark Filed December 21, 1934.

Serial No. 359,539 Room 2608.

Hon. Commissioner of Patents, Washington, D. C.

Sir; Please amend as follows:

In the amendment to line 12 of the statement, after "mark"

erase "with the exception of the medal awarded in 1900" and substitute the following: "with the exception of the medals awarded in 1900, 1895 and 1892".

This amendment is made as a result of an oral interview had with the Examiner, and is believed to place the application in condition for publication.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

October 3, 1935.

359 539-8.

Department of Commerce
United States Patent Office, Washington

John Imirie, Munsey Bldg., Washington, D. C.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., filed Dec. 21, 1934, S. N. 359 539, in Class 49 (Carta Blanca Superior) has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Oct. 29, 1935.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office, within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as

published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE,

Commissioner of Patents.

359 539-9.

No. 359 539.

Department of Commerce
United States Patent Office, Washington

Compania Ron Bacardi, S. A. Mailed Dec. 11, 1935.

Sir: Your Application for Registration of Trade-Mark Class 49
(Carta Blanca Superior, etc.) Registered Jan. 7, 1936 has been
examined and allowed.

The Certificate of Registration will be issued and forwarded to
you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE,

Commissioner of Patents.

John Iimirie, Munsey Bldg., Washington, D. C. 359 539-10.

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 28, 1905

Application December 21, 1934, Serial No. 359,530



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 28, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1888. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1890, 1895, and 1899, have been in actual use as a trade-mark by the applicant for ten years next preceding February 28, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold. Applicant is the owner of the following registrations: 204,234 Compania Ron Bacardi, S. A., June 16, 1931; 204,235 Compania Ron Bacardi,

S. A., June 16, 1931; 284,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice-President.

Registered Jan. 7, 1936 Trade-Mark 331,459

United States Patent Office

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905.

Application December 21, 1934, Serial No. 359,539

[Facsimile of Label]

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895 and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 284,224 Compania Ron Bacardi, S. A., June 16, 1931; 284,225 Compania Ron Bacardi, S. A., June 16, 1931; 284,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,552 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Com-

pania Ron Bacardi, S. A., Mar. 6, 1934; 310,555 Compania Ron Bacardi, S. A., March 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,828.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay Vice-President.

426

Classification Trade Marks

Class 49, Distilled Alcoholic Liquors.

Contents:

Application O. K. papers, Briefed.

1. Mar. 9, 1935
2. Arndt, A. & F. A. Rigbert Sep. 21, 1935
3. Arndt, B. Oct. 3, 1935. N. of P.
4. Oct. 4, 1935

359 539-11.

EXHIBIT F FOR PLAINTIFF.

390

Department of Commerce
United States Patent Office

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents in the matter

of the Trade Mark Registered to Compania Ron Bacardi, S. A., September 1, 1936 Number 338,241.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States of America the one hundred and sixty-second.

CONWAY P. COE,

[SEAL]

Commissioner of Patents.

Attest: D. E. Wilson

Chief of Division.

T. M. Serial No.,

(Series of 1905)

349825

Carta Blanca

Bacardi y Cia

Trade-mark No. 338 241

Act of February 20, 1905

Name Campania Ron Bacardi, S. A.

of Santiago De Cuba

State of Cuba

For Rum

Application filed complete: Apr. 11 1934

Examined and passed for publication F. A. Richmond Feb. 20, 1936

Examined for registration F. A. Richmond Aug 3 1936

Notice of Allowance Aug 4 1936

Examined for renewal Pg Renewed: Pg.

Representative John Imirie Stewart Maurice (See paper No. 9)

Attorney John Imirie Munsey Bldg City

Trade mark: Applicant is the owner of registrations No. 284, 225 and No. 310,654.

Merchandise: Rum

Claims use since 1887

Published in O. G. Mar 17 1936 U S Patent Office

Application No. 349,825

PETITION, STATEMENT AND POWER OF ATTORNEY

To the Commissioner of Patents:—

Compania Ron Bacardi, S. A., a company duly organized under the Laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trademark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the Act of February 26, 1905, as amended.

The Trade-Mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia." since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

An application for registration of said trademark was filed in Cuba on April 3rd, 1934, registered November 28, 1935, No. 55,273. Applicant is the owner of registrations No. 310, 654, and No. 284,225.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated, on whom process or notice of proceeding affecting the right to ownership of said Trade-Mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certifi-

cate to to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Luis J. Bacardi, Vice-President.

349 825-1

DECLARATION

Republic of Cuba,

City and Province of Havana, ss:

United States Consulate General

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said Company is the owner of the trade-mark sought to be registered; and no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in identical form or in any such near resemblance thereto as might be calculated to deceive; that an application for registration of said trade-mark has been filed in Cuba, on April 3rd, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered, and that the specimen shows the trade-mark as actually used upon the goods.

LUIS J. BACARDI

Subscribed and sworn to before me at Havana City, Republic of Cuba, this 3rd day of April, 1934.

[CONSULAR SEAL]

R. F. Washington

Consular Fee Stamp \$2/00 Cancelled

349 825-2

Department of Commerce

Jen/f

United States Patent Office, Washington

Please find below a communication from the Examiner in charge of this application.

CONWAY P. COE,

Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 349,825 Filed Apr 11 1934 For Trade-Mark
Mailed May 16, 1934

John Imirie, Munsey Building, Washington, D. C.

Applicant is required to file a certified copy of the mark when registered in Cuba. Paragraph 4 of the statement should then be changed in conformity with the registered data.

Ownership should be claimed of prior registered mark No. 284,225.

A search of Class 49 fails to show that any trade-mark like applicant's has been registered for use on the same kind of goods.

A. W. JENNISON

("Carta Blanca Bacardi y Cia")

349 825-3.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed April 11, 1934

Serial No. 349,925 Room 2508

Hon. Commissioner of Patents, Washington, D. C.

Sir:—Official action of May 16, 1934, received.

Insert in the statement, "Applicant is the owner of registration No. 284,225".

Applicant has made application for registration of the trademark in Cuba, but because of the delay in the granting of registrations in that country, applicant is unable to supply a certified copy of this particular time.

It is understood that the registration will in due course issue, and when issued, a certified copy will be supplied.

Respectfully submitted,

COMPANIA RON BACARDI, SA.

By John Imirie, Attorney.

April 29, 1935

349 825-4.

Department of Commerce

Jen/F

United States Patent Office, Washington

Please find below a communication from the Examiner in charge
of this application.

CONWAY P. COE,

Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 329,825 Filed Apr 11 1934 For Trade-Mark

Mailed May 10, 1935

John Imirie, Munsey Building, Washington

Responsive to amendment filed April 29, 1935.

The application has been returned to the files pending the filing
of a certified copy of the Cuban registration when issued. Para-
graph 4 of the statement should then be changed in accordance
with the registration data.

RICHMOND, Examiner.

(Carta Blanca Bacardi y Cia")

A.W.J.

349 825-5.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed April 11, 1934

Serial No. 349,925 Room 2505

Hon. Commissioner of Patents, Washington, D. C.

Sir: An official action of May 10, 1935, received.

A certified copy of the Cuban Registration is filed herewith.

Respectfully submitted,

COMPANIA RON BACARDI, SA.

By John Imirie, Attorney.

January 23, 1936

349 825-6.

Doctor Ramon Alonso y Padrol, Director of Trade-Mark and
Patents of the Commerce Department of the Republic of Cuba

Certificates:

First: That in accordance with the records in this office, it is

shown: That on the twenty-eighth of November, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-five Thousand Two Hundred and Seventy-three, corresponding to a commercial trademark called "Carta Blanca Bacardi y Cia", to distinguish rum, cognac, anisated, wines, beers and liquors of all kinds; and the design of which is exactly the same as the one affixed as follows:

Carta Blanca
Bacardi y Cia.

Second: That the trade-mark aforesaid is at present in full force and legal effect.

And on petition of Dr. Carlos Garate Bru, in behalf of Compania Ron Bacardi, S. A., the present certificate is issued approved by the Assistant Secretary of the Department, at Havana, on the thirteenth day of the month of January, Nineteen Hundred and Thirty-Six.

Dr. R. ALONSO PADROL

Approved: (Signature Illegible)

Asst. Secretary

349 825-7.

Jen/F

Department of Commerce
United States Patent Office, Washington

Please find below a communication from the Examiner in charge of this application. Conway P. Coe, Commissioner of Patents.

Applicant Compania Ron Bacardi S. A.

Ser. No. 349 825 Filed April 11, 1934 For Trade-Mark
Mailed Feb. 8, 1936

John Imirie, Munsey Build Washington D. C.

Responsible to paper filed January 24, 1936

The certified copy of the Cuban registration corresponding to the mark of this application has been entered of record.

Paragraph 4 of the statement should be amended in accordance with the registration data.

Otherwise, the application appears to be in condition for publication.

(Carta Blanca" etc.)

A.W.J.

RICHMOND, Examiner.

349 825-9.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed April 11, 1934

Serial No. 349,825 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action dated February 8, 1936, received.

In paragraph 4 of the statement, after "April 3rd, 1934" insert
"registered November 28, 1935, No. 55,273."

Respectfully submitted,

COMPANIA RON BACARDI, SA.

By John Imirie, Attorney.

February 13, 1936

349,825-10.

Department of Commerce

United States Patent Office, Washington

John Imirie, Munsey Bldg., City.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A. April 11, 1934, S. N. 349,825 in Class 49 (Carta Blanca has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Mark, approved February 20, 1905.

The mark will be published in the Official Gazette of Mar 17 1936

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before

one of the officers mentioned in section 2 of the act of February 20, 1905

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE,

Commissioner of Patents

349 825-11.

Opposition

Opposition No. 15648 Paper No. 8

Name, Compania Ron Bacardi, S. A.

Serial No. 349,825

Title, Rum

Filed April 11 1934

Opposition by Company Ron Daiquiri, S. A.

Decisions of

Ex'r of Interference, Dismissed as ind. Dated Jul 24 1935

Commissioner Dated

Court of Appeals Date

Remarks

349 825

Department of Commerce

United States Patent Office Washington

No. 349 825

Mailed Aug 6, 1936

LW

Compania Ron Bacardi, S. A.

Sir: Your application for Registration of Trade-mark (Carta Blanca Bacardi y Cia) Class 49 Registered Sept 1 1936 has been examined and allowed.

The Certificate of Registration will be issued, and forwarded to you, as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE

Commissioner of Patents

John. Imirie, Munsey Bldg., Washington D. C.

349 825-13.

Registered Sept. 1, 1936 Trade-Mark 338 241

United States Patent Office

Compania Ron Bacardi, S. A. Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934. Serial No. 349,825

Carta Blanca

Bacardi y Cia

STATEMENT

To the Commissioner of Patents:—

Compania Ron Bacardi, S. A. a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30. Aguilera Baja Street, Santiago Republic of Cuba, has adopted and used the trade mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia" since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

An application for registration of said trademark was filed in

Cuba on April 3rd, 1934, registered November 28, 1935, No. 55,273. Applicant is the owner of registrations No. 310,225.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated, on whom process or notice of proceedings affecting the rights of ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C. his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,
By Luis J. Bacardi, Vice-President

(Letterhead of) Compania Ron Bacardi, S. A.
Santiago de Cuba, January 28th, 1937

Commissioner of Patents, Trade Mark Division, Washington,
D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade mark 338241 registered to the undersigned on September 1st, 1936, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA "RON BACARDI", S. A.
By J. M. Bosch, Vice-President.
349 825, 14

Classification Trade Mark
Class 49, Distilled Alcoholic Liquors

Contents:
Application O. K. paper Briefed.

1. Letter May 16 1934
2. Arndt, A Apr 29 1935
3. Letter May 10 1935
4. Letter & For reg. Cer. Jun 24 1936
5. Letter Feb 8 1936
6. Amdt. B/ Feb 13 1936
7. N. of P. Feb 21 1936
8. Opp. Brief (15648)
Opp. 15648 Dismissed, Jul 24 1936 (See No. 8)
9. Appt. of Re.

349 825-15

EXHIBIT G FOR PLAINTIFF.**390**

**Department of Commerce
United States Patent Office**

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Trade-Mark Registered to Compania Ron Bacardi, S. A., August 4, 1936 Number 337,254.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and the Independence of the United States of America the one hundred and sixty-second.

CONWAY P. COE

Commissioner of Patents

[SEAL]
Attest: D. E. Wilson,
Chief of Division.

T. M. Serial No. (Series of 1905)
349 822

Trade-mark No. 337 254 Registered Aug. 4, 1936.

Trade Marks

Class 49, Distilled Alcoholic Liquors
Act of Feb. 20, 1905.

Name Compania Ron Bacardi, S. A.

of Santiago de Cuba

State of Cuba

For Rum

Application filed complete Apr. 11, 1934.

Examined and passed for publication F. A. Richmond Apr. 30,
1936

Examined for registration F. A. Richmond Jul. 6, 1936

Notice of allowance Jul. 7, 1936

Examined for renewal Pg Renewed

Representative John Iimirie Stewart Maurice

Attorney John Iimirie Munsey Bldg. City

See paper No. 6

Trade mark;

Applicant is the owner of trade-mark registration No. 310,654.

Merchandise: Rum

Claims use since 1887.

Published in O. G., Mar. 26, 1936 U. S. Patent Office

PETITION, STATEMENT AND POWER OF ATTORNEY.

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request

that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The Trade-Mark has been continuously used and applied to said goods in applicant's business since 1887, and the words "Bacardi y Cia", since 1862.

The Trade-Mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registrations No. 310,654, and No. 284,228.

An application for the registration of said trade-mark was filed in Cuba on April 3rd, 1934, and registered January 27, 1936, No. 55,526.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney which full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.

By Luis J. Bacardi, Vice-President

349 822-1.

DECLARATION

Republic of Cuba City and Province of Havana ss:

United States Consulate General

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said Company is the owner of the Trade-Mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in

identical form or in any such near resemblance thereto as might be calculated to deceive; that an application for registration of said trade-mark has been filed in Cuba, on April 3rd, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

LUIS J. BACARDI.

Subscribed and sworn to before me at Havana City, Republic of Cuba, this 3rd day of April, 1934.

R. F. Washington

Vice Consul of the United States
of America

[CONSULAR SEAL]

349 822-2.

Department of Commerce
United States Patent Office Washington

Jen/F

Please find below a communication from the Examiner in charge of this application. Conway P. Coe Commissioner of Patents.

Applicant: Compania Ron Bacardi S. A.

Ser. No. 349 822

For Trade-mark

Mailed May 16, 1934.

John Imirie, Munsey Bldg., Washington, D. C.

Applicant is required to file a certified copy of the corresponding Cuban mark when registered. Paragraph 4 of the statement should then be changed in accordance with the registration data.

Ownership of registration No. 284,228 should be claimed in the statement.

A search of Class 49 fails to show that any trade-mark like applicant's has been registered for use on the same kind of goods.

A. W. JENNISON.

("Carta de Oro Bacardi y Cia.")

349 822-3.

In the United States Patent Office

In re Application Compania Ron Bacardi, S. A.

Trade-mark Filed Apr. 14, 1934

Serial No. 349,822 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of May 18, 1934, received.

Insert in the statement, "Applicant is the owner of registration No. 284,228".

Applicant has made application for registration of the trademark in Cuba, but because of the delay in the granting of registrations in that country, applicant is unable to supply a certified copy at this particular time.

It is understood that the registration will in due course issue, and when issued, a certified copy will be supplied.

Respectfully submitted.

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

April 29, 1935.

349 822-4.

Department of Commerce
United States Patent Office, Washington

Jen/F

Please find below a communication from the Examiner in charge
of this application.

CONWAY P. COE,

Commissioner of Patents.

Application: Compania Ron Bacardi, S. A.
Ser. No. 349 822 Filed April 11, 1934 For Trade-Mark
Mailed May 10, 1935.

John Imirie, Munsey Bldg., Washington, D. C.

Responsive to amendment filed April 29, 1935.

The application has been returned to the files pending the filing
of a certified copy of the Cuban registration when issued. Para-

graph 4 of the statement should then be changed in accordance with the registration data.

(Carta de Oro Bacardi y Cia)

RICHMOND, Examiner.

349 822-5.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed, April 11, 1934.

Serial No. 349 822 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of May 10, 1935, received.

In line 16, of the statement, after "1934" change the period to a comma and insert "and registration January 27, 1936, No. 55526".

A certified copy of applicant's Cuban registration is attached hereto.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Iimirie, Attorney.

April 22, 1936.

349 822-6.

Doctor Antonio Reyes Hechavarria, Acting Director of Trade-Marks and Patents of the Commerce Department of the Republic of Cuba,

Certifies:

First: That in accordance with the records in this Office, it results: That on the twenty-seventh day of January, Nineteen Hundred and Thirty-Six, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-five Thousand Five Hundred and Twenty-six, corresponding to a trade-mark known as "Carta de Oro Bacardi y Cia.", to distinguish rum, cognac, anisated, wines, beers and liquors of all kinds, the design of which is exactly the same as the one hereinafter affixed as follows:

Carta De Oro
Bacardi y Cia

Second: That the said trade-mark is at present in full force and legal effect.

And on petition of Dr. Carlos Garate Bru, in behalf of Compania Ron Bacardi, S. A., the present certificate is issued and approved by the Assistant-Secretary of the Department, at Havana, on the eighth day of the month of April, Nineteen Hundred and Thirty-Six.

DR. ANTONIO REYES H.

Approved: Dr. Alonso Padrol
Assistant Secretary.

Department of Commerce
Office States Patent Office, Washington

John Imirie, Munsey Bldg., City

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., April 11, 1934, S. N. 349,822 in Class 49 (Carta de Oro) has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of May 26, 1936.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as

published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE

Commissioner of Patents.

349 822-9.

Department of Commerce
United States Patent Office, Washington

No. 349 822.

Mailed Jul. 9, 1936.

Compania Ron Bacardi, S. A.,

Sir: Your Application for Registration of Trade-Mark Class 49
(Carta de Oro) Registered Aug. 4, 1936 has been examined and
allowed:

The Certificate of Registration will be issued and forwarded to
you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE,

Commissioner of Patents.

John Imirie, Munsey Bldg., City

439 822-10.

Registered Aug. 4-1936 Trade-Mark 337 254.

United States Patent Office

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,822.

Carta de Oro

Bacardi y Cia

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under
the laws of the Republic of Cuba, located and doing business at

No. 30 Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trademark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia" have been used since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registrations No. 3Lo,654 and No. 284,228.

An application for registration of said trademark was filed in Cuba on April 3, 1924, and registered January 27, 1936, No. 55,526.

John Iimirie, whose postal address is Munsey Building, Washington, D. C., is designated on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Iimirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Luis J. Bacardi, Vice-President.

Letterhead of Compania Ron Bacardi, S. A.

Santiago de Cuba, January 28th, 1937.

Commissioner of Patents, Trade-Mark Division, Washington,
D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice whose postal address is 149 Broadway, New York City, on whom

process or notice of proceedings affecting the right to ownership of trade mark No. 337 254 registered to the undersigned on August 4th, 1936, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA RON BACARDI, S. A.,

By J. M. Bosch, Vice-President

349 822-11.

Classification Trade Marks
Class 49, Distilled Alcoholic Liquors

Contents:

Application O. K. papers, Briefed

1. Letter May 16, 1934
2. Amdt. A. Apr. 29, 1935
3. Letter May 10, 1935
4. Amdt B & for cert. Apr. 22, 1936
5. N. of P. May 1, 1936
6. Appt. of Rep.

349 822-12.

EXHIBIT H FOR PLAINTIFF.

390

Department of Commerce
United States Patent Office

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Trade Mark Registered to Compania Ron Bacardi, S. A., January 7, 1936 Number 331,460.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independ-

ence of the United States of America the one hundred and sixty-second.

CONWAY P. COE

Commissioner of Patents.

[SEAL]

Attest: D. E. Wilson,
Chief of Division.

T. M. Serial No.

(Series of 1905)

359 538 *

Trade-mark No. 331 460. Registered Jan. 7, 1936.
Act of Feb. 20, 1905

Name Compania Ron Bacardi, S. A.

of Santiago De Cuba

State of Cuba

For Rum

Application filed complete: Dec. 21, 1934.

Examined and passed for publication F. A. Richmond Oct. 3, 1935.

Examined for registration F. A. Richmond Dec. 9, 1935

Notice of allowance Dec. 10, 1935.

Examined for renewal Pg Renewed Pg

Representative John Iimirie Stewart Maurice.

Attorney John Iimirie Munsey Bldg. City See paper No. 5

Trade-mark: The drawing is lined for gold.

Under Ten-Year Proviso.

Merchandise: Rum.

Claims use since 1889.

Published in O. G.

Oct. 29, 1935

U. S. Patent Office

PETITION AND STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba,

Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the package containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Pedro E. Lay, Vice-President.

[SEAL]

359 538-1

DECLARATION

Republic of Cuba, Province of Oriente,
Consulate of the United States of America

At Santiago de Cuba, ss:

Pedro E. Lay, being duly sworn, deposes and says that he is Vice-President of the company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said company is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive that an application for registration of said trade-mark has been filed in Cuba, on October 27, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

[SEAL]

PEDRO E. LAY.

Subscribed and sworn to before me, at Santiago de Cuba, Cuba, this 21st day of November, 1934. Harry W. Story,

Vice-Consul of the United States of America

[CONSULAR SEAL]

359 538-2.

Department of Commerce

Jen/f.

United States Patent Office, Washington

Please find below a communication from the Examiner in charge
of this application.

CONWAY P. COE,

Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 359 538 Filed Dec. 21, 1934 For Trade-Mark

Mailed Mar. 9, 1935.

John Imirie, Munsey Bldg., Washington, D. C.

Applicant is required to file a certified copy of the corresponding

mark when registered in Cuba. Paragraph 3 of the statement should then be changed in accordance with the registration data.

Paragraph 2 of the statement is not understood, particularly in view of the alleged date of use of 1901 of the mark in its present form.

The drawing is lined for the color gold and it should be made to so appear in the statement.

Applicant should disclaim all wording with the exception of "Carta de Oro", "Bacardi", "Bacardi y Cia", and "Establecidos en 1862".

Registration is refused in view of the following registered marks:

284,224 Compania Ron Bacardi, S. A., June 16, 1931;

284,225 Compania Ron Bacardi, S. A., June 16, 1931;

284,228 Compania Ron Bacardi, S. A., June 16, 1931;

302,916 Compania Ron Bacardi, S. A., May 2, 1933;

310,916 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

359 538/2

359 538-3.

If the applicant is the present owner of these registrations, it should be made to so appear in the statement.

F. A. RICHMOND,
Examiner.

("Carta de Oro" etc.)

A. W. J.

359 538-4.

Transcript of Record of District Court.

In The United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed, December 21, 1934

Serial No. 359 538 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of March 9, 1935, received.

In the statement, change "1901", to "1889"; line 13, after "mark" insert "with the exception of the medal awarded in 1900"; after line 14, insert: "The drawing is lined to represent the color gold".

Applicant is the owner of the following registrations;

- 284,224 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,225 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,228 Compania Ron Bacardi, S. A., June 16, 1931;
- 302,916 Compania Ron Bacardi, S. A., May 2, 1933;
- 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

In the statement, line 16, after "1934" change the period to a comma and insert "and was registered August 14, 1935, No. 54,839".

A certified copy of the Cuban registration is filed herewith.

Remarks:

Since the mark is claimed under the ten year clause of the Act, it is not believed necessary to disclaim the wording as suggested by the Examiner.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

September 27, 1935.

359 538-5.

UNITED STA



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 23 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 45, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1891. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1890, 1891, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1891, and such use has been exclusive.

The drawing is used to represent the trade-mark.

Applicant is the owner of the following U. S. Patents: 284,235 Compania Ron Bacardi, S. A.

June 16, 1931; 284,236 Compania Ron Bacardi, S. A., June 16, 1931; 284,237 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,902 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,903 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,904 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,905 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,906 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1894, and was registered August 14, 1895, No. 54,539.

John Inmire, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Inmire, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full power of substitution and revocation, and to make all corrections and amendments necessary to perfect the certificate, and to transact all business with the Patent Office connected therewith.

COMPANIA RON

BY FEDERICO DE MUNIZ

Feb 1934

Doctor Ramon Alonso y Padrol, Director of Trade-Marks & Patents of the Commerce Department of the Republic of Cuba

Certifies:

First: That in accordance with the records in this office, it is shown: That on the fourteenth day of August, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-four Thousand Eight Hundred and Thirty-Nine, corresponding to a trade-mark constituted by a label formed by the joining of two national marks granted by certificates numbers 31605 and 42433, under the name of "Carta de Oro", to distinguish rum, the design of which is exactly the same as the one hereinafter affixed as follows:

[Facsimile of Label]

Second: That the said trade-mark is at present in full force and legal effect. And on petition of Dr. Carlos Garate Bru, in behalf of Compania Ron Bacardi, S. A., the present certificate is issued, approved by the Assistant Secretary of the Department, at Havana, on the eleventh day of September, Nineteen Hundred and Thirty-Five.

DR. R. ALONSO PADROL.

Approved: Carlos M. Pelaez y Cossio, Assistant-Secretary.

359 538-6-1/2.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.,

Trade-Mark Filed, December 21, 1934

Serial No. 359 538 Room 2608

Hon. Commissioner of Patents; Washington, D. C.

Sir: Please amend as follows:

In the amendment to line 13 of the statement, after "mark" erase "with the exception of the medal awarded in 1900" and substitute the following: "with the exception of the medals awarded in 1900, 1895, and 1892".

This amendment is made as a result of an oral interview had with the Examiner, and is believed to place the application in condition for publication.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

by John Imirie Attorney.

October 3, 1935.

359 538-7.

Department of Commerce
United States Patent Office Washington

LW

John Imirie, Munsey Bldg., Washington, D. C.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., Dec. 21, 1934, S N 359 538, Class 49 (Carta de Oro etc.), has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Oct. 29, 1935.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE

Commissioner of Patents.

359 538-8.

Department of Commerce
United States Patent Office Washington

No. 359 538.

Mailed Dec. 11, 1935

Compania Ron Bacardi, S. A.

Sir: Your Application for Registration of Trade-mark Class 49
(Carta de Oro etc.) Registered.

Jan. 7, 1936 has been examined and allowed.

The Certificate of Registration will be issued and forwarded
to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE

Commissioner of Patents.

John Imirie, Munsey Bldg., Washington, D. C.

359 538-9.

Registered Jan. 7, 1936 Trade-Mark 331 460

United States Patent Office

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application December 21, 1934, Serial No. 359,538

[Facsimile of Label]

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under
the laws of the Republic of Cuba and located at Santiago de Cuba,
Cuba, and doing business at 32 Aguilera Baja Street, Santiago de
Cuba, Cuba, has adopted and used the trade-mark shown in the
accompanying drawing, for Rum, in Class 49, Distilled alcoholic
liquors, and presents herewith five specimens showing the trade-
mark as actually used by applicant upon the goods, and requests
that the same be registered in the United States Patent Office in
accordance with the Act of February 20, 1905. The trade-mark in
the present form has been continuously used and applied to said

UNITED STATES PATENT

Compania Ron Bacardi, S. A., Santiago de Cuba, Cuba.

Act of February 20, 1905.

Application December 21, 1904. Serial No. 67,000.



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 33 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1902, and 1903, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color said.

Applicant is the owner of the following registrations: 284,233 Compania Ron Bacardi, S. A.

June 16, 1931; 284,233 Compania Ron Bacardi, S. A., June 16, 1931; 284,233 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,656 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imlie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imlie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice President.

goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895 and 1892; have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905 and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations:

- 284,224 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,225 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,228 Compania Ron Bacardi, S. A., June 16, 1931;
- 302,916 Compania Ron Bacardi, S. A., May 2, 1933;
- 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trademark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 34,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Pedro E. Lay, Vice-President.

Letterhead of Compania Ron Bacardi, S. A.

Santiago de Cuba, January 28th, 1937.

Commissioner of Patents, Trade Mark Division, Washington, D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade-mark No. 331 460 registered to the undersigned on January 7th, 1936, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA "RON BACARDI", S. A.,

By J. M. Bosch, Vice-President.

359 538-10.

Classification Trade Marks
Class 49, Distilled Alcoholic Liquors

Contents:

Application O. K. papers Briefed

- 1.—Rejection Mar. 9, 1935
- 2.—Amdt. A. & For Reg Cert Sep. 27, 1935
- 3.—Andt. B. Oct. 3, 1935
- 4.—N. of P. Oct. 4, 1935
- 5.—Appt. of Rep.

359 538-11.

EXHIBIT I FOR PLAINTIFF.

390

Department of Commerce
United States Patent Office

To all Persons to whom these Presents shall come,

Greeting:

This is to certify that the annexed is a true copy from the records of the office of the File Wrapper and Contents, in the matter

of the Trade Mark Registered to Compania Ron Bacardi, S. A.
September 3, 1935 Number 327,649

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States of America the one hundred and sixty-second.

CONWAY P. COE,

[SEAL]

Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division.

T. M. Serial No.
(Series of 1905)
349 823

Bacardi y Cia
Trade Mark No. 327 649
Registered Sep 3 1935

Trade Marks

Class 49, Distilled Alcoholic Liquors

Act of Feb 20, 1905

Name Compania Ron Bacardi, S. A.

Of Santiago de Cuba

State of Cuba

For Rum

Application filed complete Apr 11 1934

Examined and passed for publication F. A. Richmond Jun. 6
1935

Examined for registration F. A. Richmond Aug 5 1935

Notice of Allowance Aug 6 1935

Examined for renewal Renewed: Gf

Representative John Imirie Stewart Maurice

Attorney John Imirie Munsey Bldg City See paper No. 6

Trade mark: Under Ten-Year Proviso.

Merchandise: Rum

Claims use since 1862

Published in O. G. Jul 2-1935 U. S. Patent Office

Application No. 349 825

PETITION, STATEMENT AND POWER OF ATTORNEY**To the Commissioner of Patents:**

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The mark has been in actual use as a trade mark by the applicant and applicant's predecessors from whom title was derived for ten year next preceding February 20, 1905, to wit, 1862, and such use has been exclusive.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registration No. 310,654.

An application for registration said trademark was filed in Cuba on April 3rd, 1934, registered May 24, 1935, No. 44,339.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C. his attorney with full power of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificates and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,**By: Luis J. Bacardi, Vice-President****349 823-1.**

DECLARATION

Republic of Cuba,

City and Province of Havana ss:

United States Consulate General.

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said Company is the owner of the trademark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trademark in the United States, either in identical form or in any such near resemblance thereto as might be calculated as deceive; that an application for registration of said trade-mark has been filed in Cuba on April 3, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered, and that the specimens shows the trade-mark as actually used upon the goods.

LUIS J. BACARDI

Subscribed and sworn to before me at Havana, Republic of Cuba, this third day of April, 1934.

R. F. Washington
Vice-Consul of the United States of America

[CONSULAR SEAL]

349 823-a.

Department of Commerce
United States Patent Office Washington

Jen/F

Please find below a communication from the Examiner in charge of this application. Conway P. Coe, Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.
Ser. No. 349 823 Filed Apr 11 1934 For Trade-Mark

Mailed May 15, 1934

John Imirie, Munsey Bldg., Washington, D. C.

Applicant is required to file a certified copy of the correspond-

ing Cuban mark when registered. Paragraph 4 of the statement should then be changed in accordance with the registration data.

A search of Class 49 fails to show that any trade mark like applicant's has been registered for use on the same kind of goods.

A. W. JENNISON

("Bacardi y Cia")

349 823-2.

In The United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade Mark Filed April 11, 1934

Serial No. 349 823 Room 2608

Hon. Commissioner of Patents, Washington D. C.

Sir: Official action of May 16, 1935, received.

Applicant has made application for registration of trade-mark in Cuba, but because of the delay in the granting of registrations in that country, applicant is unable to supply a certified copy at this particular time.

It is understood that the registration will in due course issue, and when issued, a certified copy will be supplied.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By: John Imirie, Attorney

349 823-4.

April 29, 1935.

Department of Commerce
United States Patent Office Washington

Jen/f

Please find below a communication from the Examiner in charge of this application.

CONWAY P. COE,

Commissioner of Patents.

For:

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 349 823 Filed Apr 11 1934 Mailed May 10 1935

John Imirie, Munsey Bldg., Washington, D. C.

Responsive to letter filed April 29, 1935.

The application has been returned to the files pending the filing

of a certified copy of the Cuban registration when issued. Paragraph 4 of the statement should then be changed in accordance with the registration data.

RICHMOND, Examiner

("Bacardi & Cia")

A. W. J.

349 823-5.

In The United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed: April 11, 1934

Serial No. 349 823 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of May 10, 1935, received.

Add the following to Paragraph 4 of the statement registered May 24, 1935, No. 44,339"

A certified copy of the Cuban registration is filed herewith.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney

June 4, 1936.

349 823-6.

Doctor Ramon Alonso y Padrol, Director of Trade-Mark and Patents of the Commerce Department of the Republic of Cuba.

Certifies:

First: That in accordance with the records in this Office, it is shown:—That on the fourteenth day of February, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-four Thousand Three Hundred and Twenty-nine, corresponding to a trade-mark under the name of "Bacardi y Cia", to distinguish rum, cognac, anisated, beers, wines and liquors of all kinds, the design of which is exactly the same as the one hereinafter affixed: Bacardi y Cia.

Second: That the said trade-mark is at present in full force and

legal effect. And on petition of Dr. Carlos Garate Bru, on behalf of Compania Ron Bacardi, S. A., the present certificate is used, approved by the Assistant Secretary of the Department, at Havana, on the twenty-four day of May nineteen hundred and thirty-five.

R. ALONSO PADROL

Approved: Juan Rodriguez Arango
Assistant Secretary

349 823-7.

Department of Commerce
United States Patent Office, Washington

John Imirie, Munsey Bldg., Washington, D C

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., filed April 11, 1935, S N 349-823, in Class 49, has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of July 2-1935.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE,
Commissioner of Patents.

329 823-9.

Department of Commerce
United States Patent Office, Washington

No. 349 824 Mailed: Aug 7, 1935

Compania Ron Bacardi, S. A.

Sir:—Your Application for Registration of Trade-Mark (Bacardi y Cia) In Class 49 Registered Sept. 3 1935 has been examined and allowed.

The Certificate of Registration will be issued, and forwarded to you, as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE,

Commissioner of Patents.

John Imirie, Munsey Bldg., Wn. D. C.

349 823-10.

Registered Sept. 3 1936 Trade Mark 327 649

United States Patent Office
Compania Ron Bacardi, S. A., Santiago de Cuba
Act of February 20, 1905
Application April 11, 1934, Serial No. 349,823
Bacardi y Cia

STATEMENT

To the Commissioner of Patents:—

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago, Republic of Cuba, has adopted and used the trade mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title has derived for

ten years next preceding February 20, 1905, to wit, 1862, and such use has been exclusive.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registration No. 310,-654.

An application for registration of said trademark was filed in Cuba on April 3rd, 1934, registered May 24, 1935, No. 44,339.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full power of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Luis J. Bacardi, Vice-President

Letterhead of Compania Ron Bacardi, S. A.

Santiago de Cuba, January 28th, 1937

Commissioner of Patents, Trade-Mark Division, Washington,
D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade mark No. 327 649 registered to the undersigned on September 3rd, 1935, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA RON BACARDI, S. A.,

By: J. M. Bosch, Vice-President.

349 823-11.

Classification Trade Mark
Class 49, Distilled Alcoholic Liquors

Contents:

- Application O. K. papers, Briefed**
1. Letter May 16 1934
 2. Letter Apr 29 1935
 3. Letter May 10 1935
 4. Amdt. A. & For reg. Cert. Jun 4 1935
 5. N. of P. Jun 7 1935
 6. Appt. of Rep.

349 823-12.

EXHIBIT J FOR PLAINTIFF.

**The People of Puerto Rico
Office of the Executive Secretary**

To all whom these Presents shall come, Greeting:

This is to certify that the annexed is a true and correct copy from the records of this office of the Certificate of Registration, Statement and Facsimile in the matter of trade mark "Carta Blanca"—"Ron Bacardi Superior" and design, registered to Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3919, for Rhum.

The Certificate of Registration was granted for the term of ten years, and so far as is disclosed by the records of this office said certificate is still in full force and effect.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-ninth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

M. ASHFORD

Acting Executive Secretary

[SEAL]

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come,

Greeting:

This is to certify that by the records of the Office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, duly file in said office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are hereto annexed, and duly complied with the requirement of the law in such case and provided, and with the regulations prescribed by the Executive secretary of Puerto Rico.

And, upon due examination, it appearing that the said applicant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the office of the Executive Secretary of Puerto Rico, to compania Ron Bacardi S. A., its successors or assigns.

This certificate shall remain in force for ten years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

G. GALLARDO

Executive Secretary of Puerto Rico.

[SEAL] To the Executive Secretary of Puerto Rico:—

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilara Baja Street No. 30, at the City of Santiago de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile to distinguish rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles which repre-

sent the trade-mark such as is at present used in the said articles, and asks that the same be registered at the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66, approved July 28, 1933.

Petitioner asks for no protection for the exclusive use of the words "Philadelphia-1876-Ron-Superior-de-Establecidos en 1862-Santiago de Cuba y Graduacion 44-5".

The trade-mark has constantly been used and applies to said articles in petitioner's business in Puerto Rico since 1893.

The trade-mark is applied to articles or to the packages or containers, placing on them a label on which the trade-mark appears, or in any other form that may be considered adequate and convenient.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President

[SEAL OF THE CORPORATION]

CARTE OLÉOPHILA SUPERIOR

Philadelphia
1870

Ron

Bacardi Superior

DB

BACARDI Y C^{IA}.

ESTABLECIMIENTO 1868

SANTIAGO DE CUBA

EXHIBIT K FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come,

Greetings:

This is to certify that the annexed is a true and correct copy from the records of this Office of the Certificate of Registration, Statement and Facsimile in the matter of trade mark "Bacardi", registered to Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3916, for Rum.

The Certificate of Registration was granted for the term of Ten Years, and so far as is disclosed by the records of this office said certificate is still in full force and effect!

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-ninth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

M. ASHFORD

[SEAL]

Acting Executive Secretary.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come,

Greetings:

This is to certify that by the records of the Office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, duly file in said Office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are hereto annexed, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Executive Secretary of Puerto Rico.

And, upon due examination, it appearing that the said appli-

cant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the Office of the Executive Secretary of Puerto Rico, to Compania Ron Bacardi, S. A., its successors or assigns.

This certificate shall remain in force for ten years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

C. GALLARDO

Executive Secretary of Puerto Rico

[SEAL]

To the Executive Secretary of Puerto Rico:

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilera Baja Street, No. 30, at the City of Santiago, de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile, to distinguish Rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles representing the trade-mark such as is actually in use in the said articles, and asks that the same be registered in the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66, approved July 28, 1923.

The trade-mark has constantly been used and applied to said articles in the business of the petitioner in Puerto Rico, since 1893.

The trade-mark is applied to articles, packages, or containers, by placing on them a label on which the trade-mark appears, or in any other form that may be considered adequate or convenient.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President

[SEAL OF THE CORPORATION]

[Facsimile]

BACARDI

EXHIBIT L FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come, Greeting:

This is to certify that the annexed is a true and correct copy from the records of this Office of the Certificate of Registration, Statement and Facsimile in the matter of trade-mark consisting of the representation of a bat, registered to Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3917, for Rum.

The Certificate of Registration was granted for the term of ten years, and so far as is disclosed by the records of this Office said certificate is still in full force and effect.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-ninth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

M. ASHFORD

[SEAL.]

Acting Executive Secretary

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come:— Greeting:

This is to certify that by the records of the Office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, fully file in said office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are hereto annexed, and duly complied with the requirements of the laws in such case made and provided, and with the regulations prescribed by the Executive Secretary of Puerto Rico.

And, upon due examination, it appearing that the said applicant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the Office of the Executive Secretary of Puerto Rico, to Compania Ron Bacardi S. A., its successors or assigns.

This certificate shall remain in force, for ten years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

C. GALLARDO

Executive Secretary of Puerto Rico

[SEAL]

To the Executive Secretary of Puerto Rico:

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilera Baja Street No. 30, at the City of Santiago de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile, to distinguish Rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles representing the trade-mark such as is at present used in the said articles, and asks that the same be registered in the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66 approved July 28, 1923.

The trade-mark has been used and constantly applied to said articles in the business of the petitioner in Puerto Rico since 1893.

The trade-mark is applied to the articles or to the packages or containers by placing on them a label on which the trade-mark appears, or in any other form that may be considered adequate and convenient.

COMPANIA RON BACARDI, S. A.,
By Pedro E. Lay, Vice-President.

[SEAL OF THE CORPORATION]

[MEMORANDUM. Illustration of trade-mark, bat in a circle, is not here reproduced as it appears printed at page 190 of this record. A. I. CHARRON, Clerk.]

EXHIBIT M FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come, Greeting:

This is to certify that the annexed is a true and correct copy from the records of this Office of the Certificate of Registration, Statement and Facsimile in the matter of trade mark "Carta de Oro"—"Ron Bacardi, Superior" and design, registered to Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3918, for Rum.

The Certificate of Registration was granted for the term of Ten Years, and so far as is disclosed by the records of this Office said certificate is still in full force and effect.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-ninth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

M. ASHFORD

[SEAL]

Acting Executive Secretary of Puerto Rico.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come: Greeting:

This is to certify that by the records of the office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, duly filed in said Office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are

hereto annexed, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Executive Secretary of Puerto Rico.

And, upon due examination, it appearing that the said applicant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the Office of the Executive Secretary of Puerto Rico, to Compania Ron Bacardi, S. A., its successors or assigns.

This certificate shall remain in force for Ten Years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

C. GALLARDO

Executive Secretary of Puerto Rico.

[SEAL]

To the Executive Secretary of Puerto Rico:

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilera Baja, Street No. 30, at the City of Santiago de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile to distinguish Rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles which represent the trade-mark such as is at present used in the said articles, and asks that the same be registered at the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66, approved July 28, 1923.

Petitioner asks for no protection for the exclusive use of the words "Philadelphia-1876-Superior-de-Establecidos en 1862, Santiago de Cuba y Graduacion 44-5".

The trade-mark has constantly been used and applied to said articles in petitioner's business in Puerto Rico since 1893.

The trade-mark is applied to articles or to the packages or containers, placing on them a label on which the trade-mark appears,

or in any other form*that may be considered adequate and convenient.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President.

[SEAL OF CORPORATION]

[MEMORANDUM. Illustration of label is not here reproduced as it appears printed at page 261 of this record. A. I. CHARRON,
Clerk.]

EXHIBIT N FOR PLAINTIFF.

Treasury Department
Federal Alcohol Administration Division

Washington, July 16 1937

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed copies are true and exact copies of

Certificate of approval of Labels of Domestically Bottled Distilled Spirits, issued on May 18, 1937, to Bacardi Corporation of America, of San Juan, Puerto Rico, covering a brand label and strip label for Ron Superior Puerto Rican Rum;
and

Rectifier's Basic Permit, No. R-542, issued, under the Federal Alcohol Administration Act and Regulations, to Bacardi Corporation of America on November 23, 1935, and amended on March 28, 1936, to show address as Edificio La Colectiva", Marina Street, San Juan, Puerto Rico, said permit authorizing said permittee to engage in the business of rectifying and blending distilled spirits and wine, and, while so engaged, to sell, offer, and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address, and at branch offices and other places of business, the distilled spirits and wine so rectified or blended;

and

Warehousing and Bottling Basic Permit, No. BR-542, issued

under the Federal Alcohol Administration Act and Regulations, to Bacardi Corporation of America on November 23, 1935, and amended on March 28, 1936, to show address as Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico, said permit authorizing said permittee to engage, at that address and at that address only, in the business of warehousing and bottling distilled spirits, and, while so engaged, to sell, offer and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address and at branch offices and other places of business, the distilled spirits so warehoused and bottled;

on file in the records of the Federal Alcohol Administration in Washington, District of Columbia.

In witness whereof, I have hereunto set my hand, and caused the Seal of the Federal Alcohol Administration to be affixed on the day and year first above written.

A. F. ALEXANDER,
Administrator.

[SEAL]

Form L 5 Treasury Department
Federal Alcohol Administration

February, 1936

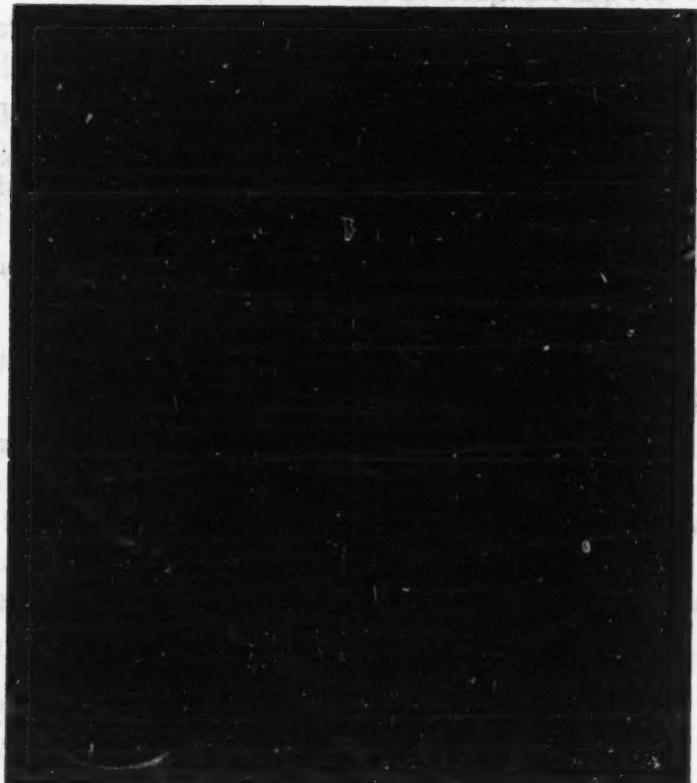
Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits

Date: May 18, 1937.

Pursuant to the application of Bacardi Corporation of America, whose address is San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering Carta de Plata (brand name) Puerto Rican Rum (class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statement of net contents appearing thereon in conformity with Section 37 of Regulations 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

at 100 feet above the river bottom. It is a flat topped plateau rising off on all sides to rolling hills covered in grass or scrub brush. A small creek bed or gully is visible on the south side of the hill.



After the fire was discovered, the smoke was seen from across the valley and the alarm was sounded.

The first car to arrive at the scene was the fire department which responded from the town of Laramie. The fire department arrived at approximately 10:30 AM and found the fire well developed. The fire was located on the south side of the hill. The fire department immediately began to attack the fire from the south side. The fire department had difficulty attacking the fire from the south side because the hillside was steep and rocky. The fire department had to use ladders and ropes to climb up the hillside. The fire department was able to get the fire under control by 11:00 AM. The fire department then began to clean up the area around the fire. The fire department also checked for any other fires in the area. The fire department then left the scene.



After the fire was extinguished, the fire department left the scene.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32(c) of Regulations 5, (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government label, if required, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from the failure of any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. A. ALEXANDER, Administrator, RWB
Federal Alcohol Administration, Washington, D. C.

Permit No. R-542

Rectifier's Basic Permit

[Under the Federal Alcohol Administration Act and Regulations]

Bacardi Corporation of America,
Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico.

Pursuant to application dated November 19, 1935, you are hereby authorized and permitted to engage, at the above address, in the business of rectifying and blending distilled spirits and wine, and, while so engaged, to sell, offer and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address, and at branch offices and other places of business, the distilled spirits and wine so rectified or blended.

This permit is conditioned upon compliance by you with sections 5 and 6 of the Federal Alcohol Administration Act and all other provisions thereof; the Twenty-first Amendment and laws relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, and malt beverages, including

taxes with respect thereto; all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which you engage in business.

This basic permit is effective from the date hereof and will remain in force until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided by law and regulations.

This permit is not transferable.

F. C. HOYT, Administrator, N.C.F.

Federal Alcoholic Administration.

Dated: November 23, 1935.

This permit amended March 28, 1936, to show address as Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico, in lieu of 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

N. C. FLANERY

Head, Permit Division

Permit No. BR-542

Warehousing and Bottling Basic Permit

[Under the Federal Alcohol Administration Act and Regulations]

Bacardi Corporation of America,

Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico

Pursuant to application dated November 19, 1935, you are hereby authorized and permitted to engage, at the above address and at that address only, in the business of warehousing and bottling distilled spirits, and, while so engaged, to sell, offer and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address (es) and at branch offices and other places of business, the distilled spirits so warehoused and bottled.

This permit is conditioned upon compliance by you with sections 5 and 6 of the Federal Alcohol Administration Act and all other provisions thereof; the Twenty-first Amendment and laws

relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, and malt, beverages, including taxes with respect thereto; all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which you engage in business.

This basic permit is effective from the date hereof and will remain in force until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided by law and regulations.

This permit is not transferable.

F. C. HOYT, Administrator, H.C.F.
Federal Alcohol Administration.

Dated: November 23, 1935.

This permit amended March 28, 1936, to show address as Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico, in lieu of 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

H. C. FLANERY
Head, Permit Division.

EXHIBIT N-1 FOR PLAINTIFF.



Form L 5 Treasury Department
Federal Alcohol Administration February, 1936.

Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits.

Date September 1, 1937.

Pursuant to the application of Bacardi Corporation of America whose address is Bacardi Building, San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering.

Bacardi Corp. of America (Carta de Plata) (Brand name) Puerto Rican Rum (Class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statement of net contents appearing thereon in conformity with Section 37 of Regulations 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32(c) Regulation 5 (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government label, if required, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from failure to any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. B. ALEXANDER, Administrator
Federal Alcohol Administration, Washington, D. C.

EXHIBIT N-2 FOR PLAINTIFF.



Form L 5 Treasury Department
Federal Alcohol Administration February, 1936.

Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits.

Date September 3, 1937.

Pursuant to the application of Bacardi Corporation of America whose address is San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering Ron Superior (brand name). Puerto Rican Rum (class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statements of net contents appearing thereon in conformity with Section 37 of Regulation 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32(c) of Regulations 5, (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the label hereby approved and the proper government label, if acquired, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from the failure of any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. B. ALEXANDER, Administrator
Federal Alcohol Administration, Washington, D. C.

EXHIBIT O FOR PLAINTIFF.

Commonwealth of Pennsylvania
Department of State

[SEAL] Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board

Harrisburg, Pennsylvania, August 5, 1937

Refer MGB

Secretary of the Commonwealth, Harrisburg, Pennsylvania

Attention: Mr. R. N. Gerner

Gentlemen: The attached is a genuine copy of a permit issued on January 1, 1936, and a certificate of cancellation of bond issued on May 27, 1936, both to the Bacardi Corporation of America, then located at 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

Signed and sealed this fifth day of August, 1937.

Very truly yours,

PENNSYLVANIA LIQUOR CONTROL BOARD

[SEAL] By: W. Worrell Wagner, Member.

Seal Permit

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board

Date Issued: January 1, 1936

Serial Number: 203

Permit No. A-52

Bacardi Corp. of America, 946-964 N Delaware Ave Philadelphia
Phila Co Pa

Now, this is to certify that the above named is hereby granted a permit to operate as a Distillery, effective on the date shown above and continuing until and including December 31, 1936, unless sooner revoked or cancelled, for the above premises.

This permit authorizes the permittee to

- (a) Produce, distill, possess, store, purchase, receive, sell, remove and deliver alcohol or alcoholic liquid;
- (b) produce, distill, possess, store, purchase for blending and rectifying only, sell and deliver to persons without the State or to State stores; rectify, blend, compound, and develop whiskey, rum, brandy, gin, cordials, and other distilled spirits.
- (c) specially or completely denature alcohol by the admixture of such denaturants according to formula approved by the Board, as shall render the alcohol or any compound in which it is authorized to be used, unfit for use as a beverage, and to sell and deliver the alcohol so denatured;

all in full accordance with the laws and regulations of the United States and the Commonwealth of Pennsylvania.

The amount which may be manufactured under this permit, excluding such alcohol as may be denatured, is less than 500,000 proof gallons.

This permit is not assignable and is valid for use only by the permittee named hereon at the location hereon designated.

Witness the hand and seal of office of the Board.

W. T. GROSSCUT

LEO A. CROSSEN

W. WORRELL WAGNER

Pennsylvania Liquor Control Board.

Countersigned:

C. E. SMITH

Director of Licensing and Enforcement.

This Permit Must be Conspicuously Displayed at the Above Location and Suitably Framed Under Glass.

Commonwealth of Pennsylvania
Liquor Control Board Harrisburg

Certificate of Cancellation of Bond

Date: May 27, 1936.

This is to certify that on March 31, 1936, bond No. dated November 25, 1935, in the penal sum of Ten Thousand Dollars

(\$10,000.00) with Bacardi Corporation of America, Philadelphia, Pa., as principal, and Indemnity Insurance Company of North America, as surety, covering General Permit No. A-52, Serial No. 203, to operate as a Distillery for the year 1936 issued to the said principal, was cancelled as of March 31, 1936, for the following reason: Surrender of Permit.

It is further certified that there are no reported violations occurring during the time the said bond was in effect.

The surety thereon is released from all liability under the said bond for acts of the said principal occurring after the date of cancellation of the said bond.

PENNSYLVANIA LIQUOR CONTROL BOARD

By: C. E. Smith

Director of Licensing and Enforcement.

Z-398

General No. 538

Serial No. A-52

Commonwealth of Pennsylvania

[SEAL]

Pennsylvania Liquor Control Board

Permit

Harrisburg, June 13, 1934

To Bacardi Corporation of America

Philadelphia, Pennsylvania

Application and bond having been duly presented and approved, you are hereby authorized to operate a distillery located at 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

This permit authorizes the permittee to

- (a) produce, distill, possess, store, purchase, receive, sell, remove and deliver alcohol or alcoholic liquid;
- (b) produce, distill, possess, store, purchase for blending and rectifying only, sell and deliver to persons without the State or State stores; rectify, blend, compound, and develop whiskey, rum, brandy, gin, cordials, and other distilled spirits.

(c) specially or completely denature alcohol by the admixture of such denaturants according to formula approved by the Board, as shall render the alcohol or any compound in which it is authorized to be used, unfit for use as a beverage, and to sell and deliver the alcohol so denatured; all in full accordance with the laws and regulations of the United States and the Commonwealth of Pennsylvania.

The business hereby permitted shall at all times be subject to inspection by the members of the Board and the persons duly authorized and designated by the Board shall have the right, without fee or hindrance, to enter any place which is subject to inspection hereunder, or any place, where records subject to inspection under the Act of February 19, 1926, P. L. 16, as amended by Act No. 9, approved December 8, 1933, are kept for the purpose of making such inspection.

Violation of any provision of law or regulation of the United States or the Commonwealth of Pennsylvania relating to the business authorized by this permit, shall be grounds for citation for revocation hereof.

This permit is not transferable or assignable.

This permit expires December 31, 1934, unless sooner revoked or cancelled.

The amount which may be manufactured under this permit, excluding such alcohol as may be denatured, is less than 500,000 gallons.

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA LIQUOR CONTROL BOARD
By: Robert S. Gawthrop, Chairman
A. Marshall Thompson, Member

Penal Provision: Sec. 20, Act of February 19th, 1926, P. L. 16, as amended by Act No. 9, approved December 8, 1933.

Section 20.—Any person or persons, who knowingly violate any of the provisions of this act, or any person who shall violate any of the conditions of any permit, or who shall falsify

any record or report required by this act to be kept or who shall violate any rule or regulation of the board, or who shall interfere with, hinder or obstruct any inspection authorized by this act, or prevent any member of the board, or any person duly authorized and designated by the board, from entering any place which such member of the board, or such person, is authorized by this act to enter for the purpose of making an inspection, or who shall violate any other provision of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00) or undergo imprisonment of not more than three (3) years, or both, at the discretion of the court.

Seal Permit

* Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board

Date Issued: January 1, 1935
Serial Number: 115

Permit No. A-52 *1935

Bacardi Corp of America, 946-964 N Delaware Ave., Philadelphia
Phila Co Pa

Now, this is to certify that the above named is granted a distillery permit effective on the date shown above and continuing until and including December 31, 1935, unless sooner revoked or cancelled, for the premises located at 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

This permit authorizes the permittee to

- (a) to produce, distill, possess, store, purchase, receive, sell, remove and deliver alcohol or alcoholic spirits;
- (b) produce, distill, possess, store, purchase for blending and rectifying only, sell and deliver to persons without the State, or to State stores; rectify, blend, compound, and develop whiskey, rum, brandy, gin, cordials, and other distilled spirits;
- (c) specially or completely denature alcohol by the admixture

of such denaturants according to formula approved by the Board, as shall render the alcohol or any compound in which it is authorized to be used, unfit for use as a beverage, and to sell and deliver the alcohol so denatured; all in full accordance with the laws and regulations of the United States and the Commonwealth of Pennsylvania.

The amount which may be manufactured under this permit, excluding such alcohol as may be denatured, is less than 500,000 gallons.

This permit is not transferable or assignable and is valid for use only by the permittee named hereon at the location hereon designated.

Witness the hand and seal of office of the board.

ROBERT A. GAWTHROP

A. MARSHALL THOMPSON

W. WORRELL WAGNER

Pennsylvania Liquor Control Board.

Countersigned:

C. E. SMITH

Director of Licensing and Enforcement.

This Permit Must be Conspicuously Displayed at the Above Location and Suitably Framed Under Glass.

Commonwealth of Pennsylvania

Department of State

Office of the Secretary of the Commonwealth

I-A No. 657

Harrisburg August 5, 1937

Pennsylvania, ss.

I, David L. Lawrence, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do hereby certify:

That it appears by the records of this office that W. Worrell Wagner now is a duly appointed, commissioner and qualified

member of the Pennsylvania Liquor Control Board, for a term beginning in March 7, 1936, until March 7, 1942, and until his successor shall have been appointed and qualified.

Hence, full faith and credit are due and ought to be given to his official acts accordingly.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

DAVID L. LAWRENCE

[SEAL]

Secretary of the Commonwealth

EXHIBIT P FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:

That in accordance with a request of Mr. Charles R. Hartzell, of San Juan, Puerto Rico, I, C. Gallardo, Executive Secretary of Puerto Rico, do hereby certify: That the attached one printed and typewritten sheet is a true and correct copy of the Certificate of Registration issued by this office to "Bacardi Corporation of America" a corporation organized under the laws of the State of Pennsylvania, of which Certificate of Registration a true and correct copy is on file in this office.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this first day of April, A. D., nineteen hundred and thirty-six.

C. GALLARDO,

[GREAT SEAL]

Executive Secretary.

The People of Puerto Rico
Office of the Executive Secretary of Puerto Rico
Certificate of Registration

No. 497

This is to certify that: "Bacardi Corporation of America" a corporation organized under the laws of the State of Pennsyl-

vania, has filed in the office of the Executive Secretary of Puerto Rico the instruments required by Sections thirty-seven, thirty-eight and thirty-nine of an act entitled "An Act to Establish a Law of Private Corporations", approved March 9, 1911.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this thirty-first day of March, A. D., nineteen hundred and thirty-six.

C. GALLARDO

Executive Secretary of Puerto Rico

[GREAT SEAL]

EXHIBIT Q FOR PLAINTIFF.

The People of Puerto Rico
Office of the Treasurer of Puerto Rico

No. 161.

Section 63—Extract. (Paragraph 3) It shall be the duty of such corporations, companies or associations to renew their licenses annually on or before the first day of July, of each year, including the first day of July nineteen hundred and one, but no such renewal shall be issued by the Treasurer until such companies, corporations or associations shall have respectively paid the license fee hereinafter specified.

(Paragraph 4) For the issue and renewal of every license issued under the provisions of this Section, the sum of Twenty-five Dollars shall be paid into the Treasury of Puerto Rico.

This is to certify that "Bacardi Corporation of America" has paid to the Treasurer of Puerto Rico the sum of Twenty-five Dollars, as per Treasurer's Receipt Rec. Off No. 1558, dated March 31, 1936, and having complied with the requirements of Section 63 of the Act of Legislative Assembly of Puerto Rico, approved January 31st, 1901, entitled "An Act to provide Revenues for the People of Puerto Rico, and for other purposes", is hereby authorized only to transact such business or exercise such powers in Puerto Rico as a domestic corporation of like character transacts or exercises in Puerto Rico, and to such an extent as the latter may be authorized under the local laws, until June 30th, 1936.

Given at San Juan, P. R., this 6th day of April, 1936.

ANTONIO R. HERNANDEZ,

Acting Asst. Treasurer

JER RSN

EXHIBIT R FOR PLAINTIFF.

The People of Puerto Rico
Office of the Treasurer of Puerto Rico

No. 29

Section 63—Extract. (Paragraph 3) It shall be the duty of such corporations, companies or associations to renew their licenses annually on or before the first day of July, of each year, including the first day of July nineteen hundred and one, but no such renewal shall be issued by the Treasurer until such companies, corporations or associations shall have respectively paid the License fee hereinafter specified.

(Paragraph 4) For the issue and renewal of every license issued under the provisions of this section, the sum of Twenty-five Dollars shall be paid into the Treasury of Puerto Rico.

This is to certify that "Bacardi Corporation of America" has paid to the Treasurer of Puerto Rico the sum of Twenty-five Dollars, as per Treasurer's Recg. Off. Receipt No. 1655, dated July 14, 1936, and having complied with the requirements of Section 63 of the Act of Legislative Assembly of Puerto Rico, approved January 31st, 1901, entitled "An Act to provide Revenues for The People of Puerto Rico, and for other purposes", is hereby authorized only to transact such business or exercise such powers in Puerto Rico as a domestic corporation of like character transacts or exercises in Puerto Rico, and to such an extent as the latter may be authorized under the local laws, until June 30th, 1937.

Given at San Juan, P. R., this 15th day of July, 1936.

F. A. RAMIREZ VEGA,

Assistant Treasurer.

JER RSN

EXHIBIT S FOR PLAINTIFF.

The People of Puerto Rico
Office of the Treasurer of Puerto Rico

No. 56

Section 63—Extract. (Paragraph 3) It shall be the duty of such corporations, companies or association to renew their licenses annually on or before the first day of July, of each year, including the first day of July nineteen hundred and one, but no such renewal shall be issued by the Treasurer until such companies, corporations or associations shall have respectively paid the License fee hereinafter specified.

(Paragraph 4) For the issue and renewal of every license issued under the provisions of this section, the sum of Twenty-five Dollars shall be paid into the Treasury of Puerto Rico.

This is to certify that "Bacardi Corporation of America" has paid to the Treasurer of Puerto Rico the sum of Twenty-Five Dollars, as per Treasurer's Recg. Off. Receipt No. 2239, dated July 28, 1937, and having complied with the requirements of Section 63 of the Act of Legislative Assembly of Puerto Rico, approved January 31st, 1901, entitled "An Act to provide Revenues for The People of Puerto Rico, and for other purposes", is hereby authorized only to transact such business or exercise such powers in Puerto Rico as a domestic corporation of like character transacts or exercises in Puerto Rico, and to such an extent as the latter may be authorized under the local laws, until June 30th, 1938.

Given at San Juan, P. R., this 2nd day of August, 1937.

F. A. RAMIREZ VEGA,
Assistant Treasurer
RSN RS

EXHIBIT T FOR PLAINTIFF.

The People of Puerto Rico
Department of Finance
Bureau of Alcoholic Beverages and Narcotics.

Permit No. 1-R

Permit

To Engage in the Rectification of Distilled Spirits in Puerto Rico
To whom it may concern:

In view of the petition duly filed with the Bureau of Alcoholic Beverages and Narcotics of the Department of Finance, a permit is hereby issued to "Bacardi Corporation of America" of San Juan, Puerto Rico, Pershing Avenue, "La Colectiva Building", to engage in the rectification of distilled spirits in Puerto Rico, and to offer, sale and deliver for sale the alcoholic beverages so produced, at the address above mentioned.

This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the Law now in force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law or Regulations.

This permit is personal and untransferable.

R. SANCHO BONET,
Treasurer of Puerto Rico

San Juan, Puerto Rico, July 20th, 1936.

EXHIBIT V FOR PLAINTIFF.

Commonwealth of Pennsylvania
County of Philadelphia, S. S.

George W. Whitney being duly sworn deposes and states that he is a resident of the City of Philadelphia, Pennsylvania, and that he is Secretary of Bacardi Corporation of America, a Pennsylvania

corporation, duly organized and existing under the laws of that state, having its principal place of business at 2004 Finance Building, Philadelphia.

He further certifies that the attached is a true and accurate copy of the original contract and license agreement dated June 8, 1934, existing between Compania Ron Bacardi, S. A., of Havana, Cuba, and the Bacardi Corporation of America as same appears in the minute book of the corporation.

He further certifies that the original of the said agreement is in his possession as of this deposition.

In witness whereof, he has hereunto attached his signature as Secretary of said corporation, together with the seal of the said corporation this ninth day of July, 1937.

[SEAL]

GEORGE WITNEY

Commonwealth of Pennsylvania,

County of Philadelphia, S. S.

On this 9th day of July, A. D. 1937, before me a Notary Public in and for the County of Philadelphia, State of Pennsylvania, personally appeared George W. Witney known to me to be the person whose name is subscribed to the above instrument and duly acknowledged that he had executed the same and requested me to certify to such fact.

Lillian M. Fornan

Notary Public

[NOTARIAL SEAL]

My commission expires April 2, 1939.

In the Courts of Common Pleas of Philadelphia County
State of Pennsylvania

County of Philadelphia, S. S.

I, John M. Scott, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, acting by my Principal Deputy, Meredith Hanna, or my Second Deputy, John J. Hoerr, do certify, that Lillian N. Fornan whose name is subscribed to the

certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledge a notary public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe the signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

The impression of the seal of the Notary Public is not required by law to be filed in this office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this tenth day of July, in the year of our Lord one thousand nine hundred thirty-seven (1937).

JOHN M. SCOTT, Prothonotary

By John J. Hoerr, Second Deputy Prothonotary.

[SEAL]

Durante Absentia, Secundum Legem.

License and Agreement Between Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba and Bacardi Corporation of America of Philadelphia, Pennsylvania.

H. EDGAR BARNES, Attorney,

20th Floor Finance Bldg.,

No. 1428 South Penn Square

Philadelphia, Pa.

Agreement made this eighth day of June, 1934, between Compania Ron Bacardi, S. A., a Company organized and existing under the laws of the Republic of Cuba,—(hereinafter for convenience called Cuban Bacardi),—of the one part, and Bacardi Corporation of America, a Corporation organized and existing under the laws

of the State of Pennsylvania, United States of America,—(hereinafter for convenience called American Bacardi), of the other part.

Whereas, Cuban Bacardi is the owner, and has exclusive knowledge, possession and ownership of certain inventions, formulae, secrets and processes which for many years it has made use of in manufacturing, selling and distributing its products, consisting principally of brands of rum known to the trade as "Bacardi, Rum", and other products manufactured, sold, distributed and/or handled by it, hereinafter collectively called "Bacardi Products"; and

Whereas, Cuban Bacardi is the owner of trademarks, tradenames, brands, labels, and other devices used in connection with and/or upon its aforesaid Bacardi Products, which have been duly protected by registration and compliance with the requirements of the Laws of the United States of America, its possessions, and the various States thereof; and

Whereas, America Bacardi for the period of time hereinafter stipulated, is desirous of securing from Cuban Bacardi, upon the following terms and conditions, the exclusive license right and privilege to manufacture, sell, and distribute, and/or have manufactured, sold and distributed throughout the United States, as hereinafter more explicitly defined, all and singular the said Bacardi Products, and is desirous of securing the exclusive license, right and privilege to use throughout the United States, as hereinafter defined, the inventions, formulae, manufacturing secrets and processes, trademarks, tradenames, brands, labels and other devices now owned or hereafter developed by Cuban Bacardi, for the period of time hereinafter set forth; and

Whereas, Cuban Bacardi is willing to grant to American Bacardi, the desired licenses, rights, and privileges upon the terms and conditions, but subject to the limitations hereinafter set forth.

Now, therefore, in consideration of the mutual benefits and promises, and other valuable considerations, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements herein contained, the parties agree as follows:

First: This agreement shall become effective upon its due and proper execution and delivery by the parties hereto, with respect to all the rights granted to manufacture Bacardi Products, but the rights to sell and distribute Bacardi Products shall not become effective until the happening of the two following events:

(A) Until that certain Agreement between Compania Ron Bacardi, S. A. (Cuban Bacardi) and Schenley Products Company, Inc., dated November 3, 1933 shall have expired or become of no further force and effect, either by reason of the limitation of time set forth in said Agreement, or by agreement terminating same; and

(B) Until that certain Agreement between Compania Ron Bacardi, S. A. (Cuban Bacardi) and one O. J. Rohde, shall have expired or become of no further force and effect, either by reason of the limitation of time set forth in said Agreement, or by special agreement terminating the same.

Immediately upon the expiration and/or termination of either one of said Agreements, then the rights herein granted to sell and distribute Bacardi Products in that particular territory covered by the Agreement so expired or terminated shall immediately become operative and of full force and effect; and with respect to the then remaining Agreement, the right to sell and distribute in its territory shall in like manner become effective upon its expiration or termination.

However, Cuban Bacardi gives and grants to American Bacardi the right to sell and distribute said Bacardi Products to said Schenley Products Company, Inc., and/or O. J. Rohde, in their respectively granted territories, prior to the expiration or termination of the said Agreements, in the event that a mutually satisfactory arrangement for such distribution and sale be made by written agreement to which, in the one case, Cuban Bacardi, American Bacardi, and Schenley Products Company, Inc., shall be parties, and by like agreement to which, in the other case, O. J. Rohde, Cuban Bacardi and American Bacardi shall be parties.

In the absence of such an agreement, however, the limitation

upon the right to sell and distribute on the part of American Bacardi shall continue in full force and effect as in this paragraph provided.

Second: The territory hereby exclusively granted by Cuban Bacardi to American Bacardi (subject to the provisions as set forth in Paragraph First) shall be and is hereby defined as follows:

All of continental United States of America, including Alaska, and the Territories and Possessions of the United States of America, (excepting the Philippine Islands, Porto Rico, and the Canal Zone) which territory is hereinafter for convenience called "the granted territory".

Third: The term of this Agreement and License shall be and the same is hereby made for the period commencing June 1, 1934, and expiring December 31, 1944,—conditioned upon American Bacardi actually paying to Cuban Bacardi the stipulated royalty to the amount, in the manner, and at the times as mentioned in Paragraph Sixth hereof, upon said products, as follows:

From June 1, 1934, to December 31, 1934, no royalty shall be paid.

From January 1, 1935, to December 31, 1936, upon 250,000 gallons.

From January 1, 1937 to December 31, 1938, upon 300,000 gallons.

From January 1, 1939, to December 31, 1940, upon 450,000 gallons.

From January 1, 1941 to December 31, 1942, upon 550,000 gallons.

From January 1, 1943, to December 31, 1944, upon 650,000 gallons.

After December 31, 1944, this License Agreement and all provisions thereof in force on December 31, 1944, shall automatically continue from year to year, and shall not terminate so long as American Bacardi shall pay to Cuban Bacardi the stipulated royalty mentioned in Paragraph Sixth, upon a minimum of one million (1,000,000) gallons of said Bacardi Products per year.

The expression—"a year", as herein used shall be deemed to be a calendar year, to wit, from January 1st to the next succeeding December 31st in each year of said term and/or terms.

Fourth: Cuban-Bacardi, subject to the conditions in this Agreement made, hereby gives and grants the following exclusive licenses, rights, privileges and franchises to American Bacardi for the following uses, purposes and objects, namely:

- (a) To manufacture, sell and distribute and/or have manufactured, sold and distributed in the granted territory, all and singular the products of Cuban Bacardi which it now makes, owns, possesses and controls, or which it may hereafter invent, discover, develop, acquire, own or control.
- (b) To use the inventions, formulae, manufacturing secrets and processes now owned or hereafter discovered, developed, and/or acquired by Cuban Bacardi.
- (c) To use the name Bacardi and/or Bacardi Rum, and all and singular the trademarks, trade-names, brands, labels, caps, bottles, packages, devices, designs, and other distinctive appurtenances, accessories or adjuncts to the subjects in this paragraph mentioned, now owned or hereafter discovered, developed and/or acquired by Cuban Bacardi.
- (d) To sell in the granted territory all brands of rum manufactured and/or handled by Cuban Bacardi and/or other products manufactured outside of the granted territory and imported into the granted territory, at such price or prices and upon such terms or shipment and payment as the parties may mutually determine from time to time during the continuance of this agreement.
- (e) To use the name Bacardi not only in the corporate title of American Bacardi, but as well as in the name of any affiliated or subsidiary Company hereafter organized and incorporated by American Bacardi for the purpose of carrying into effect the provisions of this Agreement in the granted territory.

Fifth: Nothing herein contained shall give to American Bacardi any right, title or interest in the name Bacardi, Bacardi Rum,

or in its inventions, formulae, manufacturing secrets and processes, trade-marks, trade-names, brands, labels, caps, bottles, packages, designs or other devices, except the rights, privileges and licenses herein granted to use said names, rights, and privileges as enumerated upon the products manufactured and/or sold and distributed by it in the granted territory.

It is expressly agreed that all such secret processes, secret formulae and franchises, as above mentioned, shall be and remain the sole and exclusive property of Cuban Bacardi, and shall not be divulged by American Bacardi except upon the consent of Cuban Bacardi, and the right of American Bacardi to use such secret processes, secret formulae and franchises, as above, shall wholly cease upon the termination of this Agreement.

It is expressly agreed that the labels used by American Bacardi shall in every instance bear a trademark designation now owned or hereafter owned by Cuban Bacardi; that each of said labels shall bear a clear indication of the name and title of Cuban Bacardi, together with the words "Santiago de Cuba", and that each of said labels shall further bear a clear designation that the goods distributed under the labels and each of them, are manufactured, sold and distributed by American Bacardi as the exclusive licensees in the United States of America of the Cuban Bacardi, provided, however, that nothing herein shall be construed as preventing Cuban Bacardi from granting to American Bacardi through an appropriately written privilege the right to use any particular label or labels, to be specifically identified in such written privilege, as may be deemed warranted and necessary by the parties hereto for business reasons or conditions.

It is expressly understood and agreed that no right is granted to license, sub-license or sell, transfer or assign the rights, privileges and franchises so granted and licenses to American Bacardi. In the event that American Bacardi shall organize and incorporate subsidiary or affiliated Companies in order to carry out the purposes of this Agreement, the use of the same names, licenses, rights and privileges by such subsidiaries and affiliated companies shall not be deemed or construed to be a sale or assignment or vio-

lation of the terms hereof during the continuance of this Agreement.

Sixth: American Bacardi agrees to pay to Cuban Bacardi for the rights, privileges and franchises and all other benefits conferred upon it under the terms of this Agreement, a stipulated royalty or license fee upon a gallonage basis of Bacardi products manufactured and sold by it. Such royalty or license fee is hereby stipulated to be the sum of One Dollar and Forty Cents (\$1.40) per gallon. One-half of the amount of such royalty or license fee shall be payable quarterly in United States legal tender at the designated depository of Cuban Bacardi, in Cuba, or in the United States, as Cuban Bacardi shall require, during the months of March, June, September and December of each and every year during the continuance of this contract; the remaining one-half of said royalty or license fee shall be paid to Cuban Bacardi in like money at its designated depository within ninety (90) days after December 31st of each year, as a settlement in full for all amounts due and owing for such year preceding upon royalty and license account. As hereinabove stated, the royalty or license fee is to be paid for each gallon of Bacardi Products manufactured and sold by American Bacardi, but no royalty or license fee shall be paid to Cuban Bacardi for sales made during the period extending from June 1st, 1934, to December 31st, 1934, nor upon sales made at any time for which American Bacardi has been unable to make collection and obtain payment after due and diligent effort on its part.

Seventh: Simultaneously with the payment of said quarterly royalty and license fee, American Bacardi shall render, deliver and/or transmit to Cuban Bacardi, addressed to its principal office in Santiago de Cuba, a full and accurate statement in writing, prepared in accordance with good accounting practice, of all Bacardi Products manufactured and sold by it during the preceding quarterly period. Such statement shall, at the request or option of Cuban Bacardi, be prepared and verified by a disinterested Certified Public Accountant appointed by Cuban Bacardi.

Eighth: American Bacardi shall keep true and correct records and books of account showing all goods manufactured and sold by it in accordance with the principles of good accounting practice, and Cuban Bacardi or its agents shall have the right to examine and inspect by itself or its duly authorized attorney or accountant, all the books, records and accounts of American Bacardi at all reasonable times, and to make copies as it may desire, of such records, books and accounts.

Ninth: For and in consideration that Cuban Bacardi has expended large sums of money in developing a high quality for its products recognized throughout the world, over a long period of years, it is understood and agreed between the parties that Cuban Bacardi shall designate and appoint a person experienced in the installation of the machinery and equipment, as well as in the manufacturing of Bacardi Products, who shall at all times during the continuance of this Agreement be employed by American Bacardi, and stationed at its plant, to direct and superintend the manufacture of said Bacardi Products to the end and purpose that the products manufactured by American Bacardi shall conform to the aforesaid standard of excellence and quality of the products of Cuban Bacardi. The services of such person shall be paid by American Bacardi, but such person shall be answerable to Cuban Bacardi, for the quality and excellence of the products manufactured. In the event of the resignation, death or removal of such person appointed for the purpose herein stated, Cuban Bacardi shall have the right to designate a successor to such person.

It is the spirit and intention of this Agreement that at all times during the term hereof, or any renewal or extension hereof, such direction and supervision of products manufactured shall be vested in Cuban Bacardi. This provision shall relate only to the products manufactured in the United States, and not to those imported herein.

Tenth: American Bacardi covenants and agrees that during the term of this contract it will diligently and vigorously do its utmost to develop the distribution and sale of Bacardi Products in

the granted territory, so that the royalties payable hereunder may be commensurate with and compensatory to Cuban Bacardi for the valuable rights, privileges and franchises hereby granted. American Bacardi agrees that it will not manufacture, sell, or offer for sale any products which are substitutes or imitations of, or used competitively or unfairly with Bacardi Products.

Eleventh: American Bacardi shall have the right to institute or bring any suit or suits, or other proceedings at law or in equity that it may be advised to institute for or by reason of the infringement, unauthorized use, piracy or other unfair trade competition on the part of any person, firm or corporation with respect to or in any wise affecting the inventions, formulae, manufacturing secrets and processes, trademarks, trade-names, brands, labels, caps, bottles, packages, designs, and other devices, as well as any improvements thereon or changes, made therein, the use of which has been hereinabove granted and licensed to American Bacardi, and for that purpose and all purposes American Bacardi shall have the right to use the name of Cuban Bacardi as a party complainant, either solely or jointly with American Bacardi's own name, provided, however, that such suit or suits, shall be instituted, maintained and prosecuted solely at the cost and expense of American Bacardi, and that any and all sums that may be received, obtained, collected, or recovered, in any such suit or suits, whether by decree, judgment, settlement, or otherwise, shall be the sole and exclusive property of American Bacardi.

Twelfth: Cuban Bacardi warrants that it has the ownership of and the power to grant to American Bacardi the rights, privileges and franchises hereinabove mentioned, and to authorize and empower the license hereinabove given. It hereby agrees to protect and indemnify American Bacardi against any and all actions, suits, claims demands or prosecutions that may be brought or instituted against American Bacardi, and against all damages, costs, and expenses that may be recovered against or paid by it growing out of the use by American Bacardi of its inventions, formulae, manufacturing secrets and processes, trade-marks, trade-names,

brands, labels, caps, bottles, packages, designs, and other devices granted and licensed to it by Cuban Bacardi as herein contained.

Thirteenth: Cuban Bacardi covenants and agrees that it will promptly during the continuance of this Agreement, upon the request of American Bacardi, execute, acknowledge and deliver or otherwise properly authenticate, as may be required by law, all and singular such document or documents, instrument or instruments, in writing, applications, licenses, registrations, or other legal papers which may be proper, appropriate or necessary to carry into effect the provisions of this agreement.

Fourteenth: American Bacardi agrees that with respect to the products manufactured and sold by it, it will comply with all the laws, requirements, rules, regulations and standards prescribed by the Federal, State and other public authorities, so that it shall not be subject to any fines or penalties, or violate any laws and regulations affecting the sale of the said products to the public.

Fifteenth: (A) If American Bacardi shall wilfully or negligently fail to perform its obligations under this agreement and license, or shall violate any provisions hereof, then Cuban Bacardi shall give written notice of such failure or violation, specifically setting forth the particular default or violations alleged, which notice shall be sent by registered mail to American Bacardi at its principal office or place of business in the City of Philadelphia, Pennsylvania. If American Bacardi shall continue in such default or violation for a period of sixty (60) days after said notice shall have been received by American Bacardi then Cuban Bacardi shall have the right, at its option, to terminate this entire Agreement. In such event, all the rights, privileges and franchises herein given, and the license herein granted, shall cease and absolutely terminate.

(B) In the event that American Bacardi shall fail for any particular year during the continuance of this Agreement, or any extension or renewal thereof, to pay to Cuban Bacardi the stipulated royalty based upon the minimum gallonage, as specified in Paragraph Third hereof, then Cuban Bacardi shall within thirty (30) days after the date in that particular year when default occurred make demand for the minimum royalty due by written notice

to American Bacardi sent by registered mail, addressed to its principal office in the City of Philadelphia, State of Pennsylvania. If within sixty (60) days after the receipt of such notice American Bacardi shall fail to pay the minimum royalty in full, as specified for that particular year, then Cuban Bacardi, at its option, shall have the right to terminate this entire Agreement, and shall give in like manner written notice to American Bacardi to such effect. It is agreed, however, that after the expiration of the last mentioned period of sixty (60) days without such notice being given by Cuban Bacardi, then any default for such particular year shall not be carried over to any succeeding year of this Agreement, but shall be deemed to be absolutely waived and lost.

(C) In the event that American Bacardi shall fail to make the payments of the stipulated royalty or license fee for each gallon of Bacardi Products manufactured and sold by it, in the manner as provided in Paragraph Sixth hereof, and such default shall continue for a period of sixty (60) days after written notice and demand from Cuban Bacardi sent by registered mail, addressed to American Bacardi at its principal place of business in the City of Philadelphia, State of Pennsylvania, then Cuban Bacardi shall, at its option, have the right to terminate this entire Agreement by appropriate written notice sent in like manner to American Bacardi.

Sixteenth: So long as American Bacardi shall faithfully comply with the terms and conditions of this Agreement and License Cuban Bacardi warrants and agrees that it shall have and enjoy without interference or hindrance the rights privileges, and benefits hereby granted to it.

Seventeenth: Should American Bacardi, or the business operated by it fail, become bankrupt, or be placed in the hands of a Receiver, then this Agreement and License shall automatically terminate and be of no further force and effect whatsoever.

Eighteenth: This Agreement shall become binding upon the parties hereto only upon the ratification of its execution and delivery by the respective Boards of Directors of Cuban Bacardi and

American Bacardi. Each party hereto shall send to the other written notice immediately upon such ratification.

This Agreement shall be construed in accordance with the Laws of the States of Pennsylvania.

Wherever in this Agreement the name "Compania Ron Bacardi, S. A." appears, it shall be read and known to be "Compania Ron Bacardi, S. A."

In witness whereof, the parties hereto have respectively caused their names to be written and their corporate seals to be hereunto affixed, duly attested by their proper Officers, the day and year first above written.

COMPANIA RON BACARDI, S. A.,

By: Henri Schueg, President

Attest: Secretary.

BACARDI CORPORATION OF AMERICA,

By: Luis J. Bacardi, President.

Attest: Nemesio Alvare

Secretary.

[SEAL]

State of Pennsylvania

County of Philadelphia ss.

I, Nemesio Alvare, Secretary of the Bacardi Corporation of America, a Corporation of the State of Pennsylvania, do hereby certify that the following is a true and correct copy of the Preambles and Resolutions passed at a duly convened meeting of the Board of Directors of the Bacardi Corporation of America, held on the Eighth day of June, 1934, at No. 2004 Finance Building, 1428 South Penn Square, in the City of Philadelphia, Pennsylvania, and that said Preambles and Resolutions have not been amended, rescinded or revoked in any way whatsoever:

Whereas the Officers of this company were authorized by the Board of Directors at the meeting held on the 25th day of April, 1934, to negotiate with the Compania Ron Bacardi, S. A., Santiago de Cuba, Cuba, a contract and license agreement whereby this Company shall acquire the right to use

the name Bacardi and all and singular the trademark, trade-names, formulae, labels, brands, and packages of said Company; and

Whereas pursuant to the authority granted at said meeting, the officers of this company have negotiated such a contract whereby this company, upon the terms and conditions and subject to the limitations as set forth in detail in the proposed written agreement between said Compania Ron Bacardi, S. A., of Santiago de Cuba,—Cuba, and this Company, (as submitted to this meeting and read paragraph by paragraph), acquires such rights, licenses and privileges.

Now, therefore, be it resolved that the Officers of this Company be and they are hereby authorized, instructed and directed to execute and deliver for, on behalf of, and in the name of this corporation, that certain license agreement and contract between Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, and this Company, dated June 8, 1934, whereby this Company acquires the exclusive license, right and privilege to manufacture, sell and distribute throughout the United States, as in said Agreement defined, all and singular the Bacardi Products, together with the exclusive license, right and privilege to use the inventions, formulae, manufacturing secrets and processes, trade marks, trade-names, brands, labels, and other devices upon the terms and subject to the limitations and conditions as in said contract expressly provided, and for and in consideration of the license and royalty payments as therein particularly specified and at large set forth.

Be it further resolved that the Officers of this Company be and they are hereby authorized and empowered to carry out and perform the said Resolutions and do all things necessary and proper on the part of this company to be done and performed in order to execute and make delivery of the said Agreement, and to carry out the intendment of these Resolutions.

I do further certify that the foregoing contract, to which this certification is attached, has been carefully examined by me, and it is in all respects the true and genuine contract which was submitted to, read, approved and authorized to be executed and delivered by the Directors of said Bacardi Corporation of America.

In witness whereof I have hereunto set my hand and the seal of said Corporation. Dated at Philadelphia, this eighth day of June, A. D., 1934.

NEMESIO ALVARE
Secretary

[SEAL]

EXHIBIT W FOR PLAINTIFF.

Amendment to Agreement of June 8, 1934.
Compania Ron Bacardi and Bacardi Corporation of America

AGREEMENT

made this 19th day of December, 1935, between Compania Ron Bacardi, S. A., a Company organized and existing under the laws of the Republic of Cuba, (hereinafter called Cuban Bacardi), and Bacardi Corporation of America, a Corporation organized and existing under the Laws of the State of Pennsylvania, United States of America (hereinafter called American Bacardi):

Witnesseth:

Whereas, the parties hereto entered into an Agreement dated June 8, 1934, whereby Cuban Bacardi granted unto American Bacardi under certain terms and conditions, for certain territories therein described, certain licenses, franchises, rights and privileges connected with the use of the inventions, formulae, manufacturing secrets and processes, trade-marks, trade-names, brands, labels and other devices then owned or thereafter to be developed by Cuban Bacardi, and

Whereas, it now seems advisable and highly beneficial to both parties that the territory described in said agreement on June 8, 1934, be increased and extended and that certain provisions of

said agreement relating to the payment of royalties be amended and modified.

Now therefore, in consideration of the mutual benefits and promises, and other valuable considerations, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements herein contained, the parties agree that the said agreement of June 8, 1934, shall be and hereby is duly amended, changed and supplemented as follows:—

(1) The second paragraph of Section Second of the said agreement, which described and outlines in detail all of the so-called "granted Territory" wherein the exclusive licenses, franchises, privileges and rights granted to American Bacardi are to apply, shall be amended, changed and supplemented to read:

"All of continental United States of America, including Alaska, and the Territories and Possessions of the United States of America, (excepting the Phillipine Island, and the Canal Zone)! which territory is hereinafter for convenience called "the granted territory".

(2) The schedule of dates and number of gallons recited in the first paragraph of Section Third of the said agreement, which govern the amount of royalties that are to be paid as provided in Section Sixth of the said agreement, shall be amended, changed and supplemented to read:

"From June 1, 1934, to December 31, 1938, no royalty shall be paid.

"From January 1, 1939, to December 31, 1939, upon 250,-000 gallons.

"From January 1, 1940, to December 31, 1940, upon 300,-000 gallons.

"From January 1, 1941, to December 31, 1941, upon 450,-000 gallons.

"From January 1, 1942, to December 31, 1942, upon 550,-000 gallons.

"From January 1, 1943, to December 31, 1944, upon 650,-000 gallons."

(3) The last sentence of Section Sixth of the said Agreement, referring to the dates when the royalty or license fee is to be paid, shall be amended, changed and supplemented to read:

"As hereinabove stated, the royalty or license fee is to be paid for each gallon of Bacardi Products manufactured and sold by American Bacardi, but no royalty or license fee shall be paid to Cuban Bacardi for sales made during the period extending from June 1st, 1934, to December 1st, 1938, nor upon sales made at any time for which American Bacardi has been unable to make collection and obtain payment after due and diligent effort on its part."

In all other respects and particulars the said Agreement of June 8, 1934, is hereby ratified, confirmed and approved in its entirety.

It is specifically agreed that the approval and consent by either party to the amendments, changes and supplements herein contained shall not be construed by the other as such an act as will constitute a violation, reach, rescission and/or cancellation of said Agreement of June 8, 1934, or as such an act as will require or obligate either party to make other and additional amendments, changes and supplements to the said agreement, or as a waiver of any of their respective rights thereunder.

In witness whereof, the parties hereto have respectively caused their names to be written and their corporate seals to be hereunto affixed, duly attested by a proper officer, the day and year first above written.

COMPANIA RON BACARDI, S. A.

By Henri Schueg, President.

BACARDI CORPORATION OF AMERICA,

By: Jose M. Bosch,

Vice-President & Treasurer

[SEAL]

EXHIBIT X FOR PLAINTIFF.

March 6, 1936.

Porto Rican American Tobacco Co., San Juan, Puerto Rico.

Gentlemen: — Confirming conversations between the undersigned, J. M. Bosch, Treasurer of Bacardi Corporation of America,

hereinafter referred to as the "corporation", and your Messrs. Charls and Pasarell, I beg to submit herewith for your confirmation and acceptance, the following proposals:

That the corporation will arrange with the Federal Emergency Relief Administration, hereinafter referred to as the "FERA", the present lessee of the building owned by you and known as the "Marina property of The Porto Rican American Tobacco Co.", a five-story building situated on the marginal street and across from the American Railroad Station, San Juan, P. R., to occupy, with the consent of the FERA, such portion or portions of the said building as may become available for the use of the corporation during the period of the present lease occupancy of the building by the FERA; arranging with the FERA for the payment to it of such amounts for the use of such released portions of the said building as may be mutually agreed upon between the corporation and the FERA; it being understood that the corporation will obtain the acquiescence by the FERA that this arrangement will not affect in any manner the direct relationship of landlord and tenant between the FERA and yourselves under the existing lease; this partial occupancy by the corporation for the purposes of its operations of manufacturing and storage of its products, under the foregoing conditions, being fully agreed to by you.

That immediately upon termination of the lease and/or occupancy of the said building and premises by the present lessee thereof, the said FERA, you will formally execute a legal document or documents of lease and option to purchase, in favor of and acceptable to the said corporations, its successors or assigns, upon the following terms:

The rental of the said building to be at the rate of \$800.00 per month payable at the end of each month.

The term of the said lease to be for three years from the date of the formal execution and ratification of the same.

The inclusion in the said lease document or documents of a firm option by you to the corporation, its successors or assigns, to purchase the said building and land now pertaining thereto for the

total sum of \$95,000.00, at any time during the term of the said lease in which the said Corporation, its successors or assigns may elect to purchase the said property at the said purchase price, undertaking to convey recordable title by proper documents, free of all liens or encumbrances whatsoever.

That the lessee shall pay said rental promptly, as provided in the said document of lease.

That the lessor shall keep the roof and exterior of the building in good condition and repair; all interior alterations and repairs made by the lessee to be for its account. The lessee to undertake to return the property to the owners at termination of lease in condition equivalent to its present condition.

That if the lessee in any way increases the insurance hazard of the said building, the lessee shall pay the additional cost of such insurance, and will also reimburse the lessor for any increase in property taxes on the specific property as a result of direct improvements by the lessee, but not as a result of a general property tax increase in the city of San Juan.

It is mutually agreed and understood by you and the undersigned that in consideration of the said lease and upon your acceptance and ratification of this communication the same shall constitute a formal undertaking of lease and option to purchase under the conditions hereinabove set forth.

BACARDI CORP. OF AMERICA,
J. M. Bosch, Treasurer

The foregoing is fully accepted and confirmed.

PORTO RICAN-AMERICAN TOBACCO COMPANY
By: Charles J. Charles.

EXHIBIT Y FOR PLAINTIFF.

P. Juvenal Rosa
Abogad-Notario

Numeros Eight.

Escritura de Lease and Option of Purchase Otorgada por
The Porto Rican American Tobacco Co.

and

The Bacardi Corporation of America
on July 22, 1936
At San Juan, Puerto Rico

Deed Number Eight
Lease and Option of Purchase.

In the City of San Juan, Island of Puerto Rico, on the twenty-second day of the month of July nineteen hundred and thirty-six. Before me P. Juvenal Rosa, a Notary Public in and for the Island of Puerto Rico with office situated on the fifth floor of Ochoa Building, San Juan, Puerto Rico, there appear:

On the one part.—Mr. Charles J. Charles, of legal age, married and resident of San Juan, Puerto Rico. Mr. Charles J. Charles appears as attorney-in-fact of the Porto Rican American Tobacco Company, a corporation organized and existing under the laws of the State of New Jersey with principal office in the City of Newark, New Jersey, hereinafter called "the lessor".

And on the other part.—Mr. Jose M. Bosch, of legal age, married, and resident of New York, N. Y., Mr. Bosch appears as Vice-President of the Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania, United States of America, duly authorized to do business in Puerto Rico, hereinafter called "the lessee".

The appearing parties state that they are authorized by their principals to enter into this contract and hereby undertake to deliver to each other the proper and necessary documentary evidence of their authority to be presented when and as it should be necessary.

The appearing parties assert that they are in the full enjoyment and exercise of their civil rights, nothing being known to me, the Notary, to the contrary, and I being of the opinion that they have sufficient legal capacity for the execution of this instrument, they freely and voluntarily state

First.—That the Lessor owns in fee the following property:

"Urban.—Lot marked with letter 'A', in the place known as 'Terraplen', on the east side of the 'Muelle de Travesia', Marina ward of this city, composed of one thousand seven hundred forty-nine square meters four hundred seven millimeters. Bounded on the north by the o^l Hornos Militares, today, Building of The People of Puerto Rico, on the south, by the side-walk of the pier, today, Malecon Street; on the east, by a street without name, to-day, General Haig Street, and on the west by a street without name, to-day, Street "C". On this lot there has been built a four story and attic concrete building, one hundred (100) feet wide by one hundred and seventy-two (172) feet long, with its plumbing installation and all fittings installed and used in connection therewith, and a garage. Recorded at page one hundred thirty-three (133) of volume forty-one (41) of the Capital, property one thousand six hundred ninety-six (1696), inscription third.

Second.—That the above described lot was acquired by the lessor by purchase made from the partnership Rucabado & Portela, as per deed Number Fifty, executed in San Juan, Puerto Rico, on February two, nineteen hundred, before Notary Public Santiago B. Palmer.

Third.—That the Lessor has agreed to let and hereby does let and demise unto the Lessee the above described building and lot, with all its appurtenances, furniture and fixtures, to be used by the Lessee for the purposes of its operations of manufacturing and storage of rum and any other legitimate business, under the following stipulations and conditions:

(a) The term of this lease shall be for three years, beginning on July first, nineteen hundred and thirty-six, and ending on July first nineteen hundred thirty-nine, to which date it is made retroactive.

(b) The rental of this lease shall be Eight Hundred Dollars (\$800.00) per month payable at the end of each month, at the office of the Lessor in San Juan, Puerto Rico.

(c) All taxes and excises on the premises herein leased shall be paid by the Lessor, and the water and electricity used in the premises shall be paid by the Lessee.

(d) The Lessee shall pay the rental promptly and the Lessor shall keep the roof and exterior of the building in good condition and repair, but all the interior alterations and repairs made by the Lessee, and the repair of the alterations shall be for its own account.

(e) The Lessee hereby agrees and undertakes to return the property to the Lessor at the termination of the lease in a condition substantially the same as its present condition, subject to necessary wear and tear.

(f) If the Lessee in any way increases the insurance hazard of the leased building, the Lessee shall pay the additional cost of such insurance and will also reimburse the Lessor for any increase in property taxes on the specific property as a result of direct improvements by the Lessee, but not as a result of a general property tax increase in the city of San Juan!

Fourth.—In consideration of the premises it is mutually agreed and understood by the Lessor and Lessee that the Lessee, its successors or assigns, shall have and is hereby granted an option to purchase the said building and land now pertaining thereto for the total sum of Ninety Five Thousand Dollars (\$95,000.00) at any time during the term of this lease, at which time the Lessee, its successors or assigns, may elect to purchase the said property at the said purchase price, the Lessor hereby undertaking and agreeing to convey recordable title by proper documents, free from all liens or encumbrances whatsoever.

Fifth.—Except in the case of legal action for non-payment of the rentals, the parties hereby agree to submit to arbitration any doubt or misunderstanding which may arise in the interpretation of this contract. The arbitrators shall be appointed, one by each

party and a third one by these two, the parties hereby agreeing and undertaking to abide by their decision, or by the decision of a majority thereof. In case the two arbitrators appointed by the parties do not agree as to the appointment of the third arbitrator within fifteen days, the parties shall be at liberty to enforce their rights in the courts, provided that the two arbitrators have not prior to the expiration of the fifteen days, agreed to extend this limit.

Sixth.—This contract may be recorded in the Registry of the Property, and the Registrar's fee for recording as well as those for its cancellation at its termination, shall be paid by the Lessee.

The appearing parties accept this deed in the form it reads and it is executed before me, the Notary, in the presence of the two witnesses, of legal age and residents of San Juan, Puerto Rico, Mr. Luis E. Diaz and Mr. Charles R. Hartzell.

The pertinent legal warnings having been made by me the Notary, and this deed having been read by the appearing parties and witnesses, to which I certify, the said parties approved and ratify its contents and sign it together with the witnesses, before me, the Notary.

The appearing parties have placed their initials on all other sheets in accordance with the Notarial Law now in force.

To all the foregoing, and to my personal knowledge of the appearing parties and witnesses, and of their respective ages, civil status and residence, by their statements, and to everything else contained and by me averred in this instrument, I, the Notary certify, upon my notarial faith, and under my mark, signature and seal.

(Signed) CHARLES J. CHARLES.

JOSE M. BOSCH.

LUIS E. DIAZ.

CHARLES R. HARTZELL.

Signed, (marked, rubricated and sealed) P. JUVENAL ROSA.—
Notary Public.

[Cancelled on the original the necessary Internal Revenue
Stamps]

It is in accordance with the original which under number Eight appears in the general current notarial protocol in my charge, to which I refer. And at the request of Mr. Jose M. Bosch, I hereby issue this first certified copy of seven pages, with the notation thereof on the original.—San Juan, Puerto Rico, on the twenty-second day of July, nineteen hundred and thirty-six.

P. Juvenal Rosa,

Notary Public

Cancelled Internal Revenue Stamps \$3.30.

Inscrito a folio 122, tomo 43, de esta ciudad finca 1696, inscripcion 6a., practicada con vista de otros documentos, sin mas gravamen que el arrendamiento.

San Juan, P. R., 15 Octubre, 1936.

A. Malaret, Registrar.

Cancelled \$23.00 in stamps, num's 175 Arl y C. P.

EXHIBIT Z FOR PLAINTIFF.

San Juan, Puerto Rico,
March 31st, 1936.

The Honorable, The Treasurer of Puerto Rico, San Juan, P. R.

Attention: Bureau of Excise Taxes.

Sir: The Bacardi Corporation of America, a Pennsylvania corporation, having received Certificate of Registration No. 497 from the Executive Secretary of Puerto Rico, pursuant to the Private Corporations Act of 1911 as amended, and having paid the annual license fee to the Treasury Department as required, respectfully informs you that it is its purpose, subject to its compliance with the provisions of Act No. 38 of 1935 and Treasury Department regulations, to engage in the business of rectifying of distilled spirits dealing as a wholesaler therein, and maintaining such bonded warehouses as may be necessary for the purpose.

Therefore, in accordance with the said Act and the regulations therein provided, the corporation has the honor to request:

1.—Inspection by the Bureau of Excise Tax of the premises

which the company proposes to use for rectifying purposes, etc., situated in the building known as "La Colectiva", at calle Marina corner of Calle General Haig, heretofore occupied in part by the Federal Emergency Relief Administration.

2.—Issuance of form of certificate required by Section 12 of the said Act, No. 38 in order that the company may execute and file the same in your office for approval.

3.—Specification of the amount of bond required under section 30 of the said Act.

4.—Issuance, upon approval of the foregoing and the payment of the necessary fees, of the following licenses:

(a) Rectifier (25.00)

(b) Wholesale dealer in alcohol, distilled or rectified alcohol spirits, etc. (class to be assigned)

(c) The establishment of such warehouse or warehouses as may be necessary in connection with the foregoing operations under such bond as may be prescribed by the Treasurer of Puerto Rico, etc.

5.—Any such other requisite action by your Bureau as may be provided for by the said Act and regulations.

Respectfully,

BACARDI CORPORATION OF AMERICA

By: Vice-President

EXHIBIT AA FOR PLAINTIFF.

The People of Puerto Rico
Dept of Finance Office of the Treasurer

San Juan, Puerto Rico,
April 6th, 1936.

Bacardi Corporation of America c/o Hartzell, Kelley & Hartzell,
Ochoa Building, San Juan, Puerto Rico.

Attention Mr. Bosch, Vice-President,

Sirs: Receipt is acknowledge of your letter of March 31, 1936,
relative to the requirements of laws and regulations for the estab-

lishing and operating of a rectifying plant for the rectification of distilled spirits to be located at the corner of Marina and General Haig Streets, in the building known as "La Colectiva".

According to the Beverage Law in force and the rules and regulations of the Department, the following must be submitted to this office for approval before the corresponding license may be authorized:

Certified copy of the Basic Permit issued by the Federal Alcohol Administration to Bacardi Corporation of America, as rectifier in Puerto Rico.

Certified copy of Certificate of Registration of the Executive Secretary of Puerto Rico.

Sworn statement of an official of the Corporation setting forth the names of the persons duly authorized to sign official documents in connection with the operation of the rectifying plant and their official positions.

Rectifier's Bond in the amount of \$10,000 (Department Form No. 210).

According to an inspection made personally by Mr. Bell of the Beverage Division, with Mr. Bosch, of the building in which the rectifying plant is to be established, there are a number of exposed pipes constituting a water sprinkling system throughout the building; the disposition of which will be left pending until final installation of the rum pipes leading to and from the bottling and processing room. Otherwise the building and its location has the approval of the Department as a rectifying plant.

Approval of the Bonded Warehouse is also left pending the necessary changes in conformity with the rules and regulations of the Department as indicated by Mr. Bell to Mr. Bosch on the inspection trip.

Upon presentation of the above mentioned forms and certified copies, due consideration will be given to the issuance of the corresponding rectifier's license.

If possible, a set of preliminary plans showing details of proposed installations should be submitted to the Department. These

plans, will, of course, be subject to change in accordance with the final installations.

Respectfully,

R. SANCHO BONET,

Treasurer of Puerto Rico.

EXHIBIT AB FOR PLAINTIFF.

September 25th, 1936.

Hon. Treasurer of Puerto Rico, San Juan, Puerto Rico.

Sir: As you know, we are the holders of the following permits:

Permit to Rectify No. 1-R, dated July 20, 1936.

Permit to Distill No. 11-D, dated July 20, 1936.

Permit to import alcoholic beverages No. 55, dated August 11, 1936.

Permit for a warehouse No. 16-A, dated September 19, 1936.

Permit for a warehouse in our distillery No. 13, dated August 18, 1936.

We beg of you to have the kindness to order and send us the renovation of the said permits to continue our industry in accordance with the new Beverage Law.

Awaiting the favor of a prompt answer, we thank you and remain,

Respectfully,

Vice-President.

EXHIBIT AC FOR PLAINTIFF.

The People of Puerto Rico

Department of Finance

Bureau of Alcoholic Beverages and Narcotics.

San Juan, Puerto Rico

September 29th, 1936

Bacardi Corporation of America, San Juan, Puerto Rico

Sirs:—I acknowledge receipt of your letter of the 25th instant, in which you request a renewal of the licenses granted you by

this Department for the business of distilling, rectifying, importing and warehousing of distilled spirits.

In answer I here transcribe the Art. 45 of the law re alcoholic beverages approved June 30th, 1936 which reads as follows:—

"Section 45.—No person may engage in Puerto Rico in the business of distilling, rectifying, manufacturing, bottling or canning, or storing distilled spirits, rectified spirits, or alcoholic beverages, unless such person has received a permit from the Treasurer for engaging in said activities. For each kind of these activities a separate permit issued by the Treasurer shall be required. The form, scope, and conditions of said permits shall be prescribed by the Treasurer, by regulation. The permits to which this section refers shall not be confounded with the licenses required under other provisions of this Act, and shall be granted only on such conditions as the Treasurer may by regulation prescribe."

In accordance with that prescribed by the said article, you do not require a renewal of the licenses granted you in order to continue the activities referred to.

Yours very truly,

(illegible) Looks like

F. A. Ramirez Vega

Assistant Treasurer.

EXHIBIT AE FOR PLAINTIFF.

Hon. Treasurer of P. R., San Juan, P. R.

Sir: We acknowledge receipt of your letter of the 10th inst. and enclose herewith two applications; one requesting a permit for distilling and the other for rectifying alcoholic beverages, in accordance with the forms that we received from you.

This petitioner respectfully informs the Treasurer that in its opinion law No. 115 of May 15th, 1936 contains provisions which are unconstitutional or otherwise illegal, and the applicant therefore reserves its constitutional right to submit to the courts the

validity or legality of any section a part of this or any other law or regulation whenever it deems it advisable.

Very respectfully,

J. M. BOSCH,

Vice President.

JMB-aaf

EXHIBIT AF FOR PLAINTIFF.

[SEAL OF U. S.]

United States of America
Treasury Department

Washington, December 31, 1937.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States) I hereby certify that the annexed

Regulations No. 3, Relating to Bulk Sales and Bottling of Distilled Spirits, and

Regulations No. 5, Relating to Labeling and Advertising of Distilled Spirits are true and correct copies of the originals on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury.

S. H. Marks

Actg. Chief Clerk, Treasury Department

[Seal of the Crw. Treasury Department]

Treasury Department
Federal Alcohol Administration
Regulations No. 5

LABELING AND ADVERTISING OF DISTILLED SPIRITS

As Amended to August 11, 1936

(Regulations are not copied as printed copies may be obtained)

Treasury Department
Federal Alcohol Administration
Regulations No. 3

BULK SALES AND BOTTLING OF DISTILLED SPIRITS

December 1935

(Regulations are not copied as printed copies may be obtained)

TREASURY DEPARTMENT
FEDERAL ALCOHOL ADMINISTRATION

REGULATIONS No. 5

RELATING TO

LABELING AND ADVERTISING
OF DISTILLED SPIRITS

UNDER THE PROVISIONS OF THE
FEDERAL ALCOHOL ADMINISTRATION ACT, APPROVED
AUGUST 29, 1935 (PUBLIC, No. 401, 74th CONGRESS)

AS AMENDED TO AUGUST 11, 1936



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

REGULATIONS RELATING TO LABELING AND ADVERTISING OF DISTILLED SPIRITS

ARTICLE I. DEFINITIONS

As used in these regulations—

- (a) The term "Act" means the Federal Alcohol Administration Act.
- (b) The term "Administration" means the Federal Alcohol Administration.
- (c) The term "Administrator" means the head of the Federal Alcohol Administration.
- (d) The term "permittee" means any person holding a basic permit under the Federal Alcohol Administration Act.
- (e) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.
- (f) The term "bottle" means any container, irrespective of the material from which made, used for the sale of distilled spirits at retail.
- (g) The term "in bulk" means in containers having a capacity in excess of one wine gallon.
- (h) The term "gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 68° F. (20° C.). All other liquid measures used are subdivisions of the gallon as so defined.
- (i) The term "brand label" means the label carrying, in the usual distinctive design, the brand name of the distilled spirits.
- (j)* The term "age" means the period during which, after distillation and before bottling, distilled spirits have been kept in oak containers, charred if for a whiskey of American type other than corn whiskey, straight corn whiskey, blended corn whiskey, or a blend of straight corn whiskeys. In the case of American type whiskeys produced on or after July 1, 1936, other than corn whiskey, straight corn whiskey, blended corn whiskey, and blends of straight corn whiskey, "age" means the period during which the whiskey has been kept in charred new oak containers.

(k) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(l) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(m) The term "person" means any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(n) Any other term defined in the Federal Alcohol Administration Act and used herein shall have the same meaning assigned to it by such Act.

ARTICLE II. STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

SEC. 20. *Application of standards.*—The standards of identity for the several classes and types of distilled spirits set forth herein shall be applicable to all regulations and permits issued under the Act. Whenever any term for which a standard of identity has been established herein is used in any such regulation or permit, such term shall have the meaning assigned to it by such standard of identity.

SEC. 21. *The standards of identity.*—Standards of identity for the several classes and types of distilled spirits set forth herein shall be as follows:

CLASS 1. *Neutral spirits or alcohol.*—"Neutral spirits" or "alcohol" are distilled spirits distilled from any material at or above 190° proof, whether or not such proof is subsequently reduced.

CLASS 2. *Whiskey.*—(a) "Whiskey" is an alcoholic distillate from a fermented mash of grain distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whiskey, and withdrawn from the cistern room of the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof; and also includes mixtures of the foregoing distillates for which no specific standards of identity are prescribed herein. "Rye whiskey", "bourbon whiskey", "wheat whiskey", "corn whiskey", "malt whiskey", or "rye malt whiskey" is whiskey which has been distilled at not exceeding 160° proof from a fermented mash of not less than 51% rye grain, corn grain, wheat grain, corn grain, malted barley grain or malted rye grain.

respectively, and also includes mixtures of such whiskeys where the mixture consists exclusively of whiskeys of the same type.

(b) "Straight whiskey" is an alcoholic distillate from a fermented mash of grain distilled at not exceeding 160° proof and withdrawn from the cistern room of the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof, and is—

- (1) Aged for not less than twelve calendar months if bottled on or after July 1, 1936, and before July 1, 1937; or
- (2) Aged for not less than eighteen calendar months if bottled on or after July 1, 1937, and before July 1, 1938; or
- (3) Aged for not less than twenty-four calendar months if bottled on or after July 1, 1938.

The term "straight whiskey" also includes mixtures of straight whiskey which, by reason of being homogeneous, are not subject to the rectification tax under the Internal Revenue Laws.

(c) "Straight rye whiskey" is straight whiskey distilled from a fermented mash of grain of which not less than 51% is rye grain.

(d) "Straight bourbon whiskey" and "straight corn whiskey" are straight whiskey distilled from a fermented mash of grain of which not less than 51% is corn grain.

(e) "Straight wheat whiskey" is straight whiskey distilled from a fermented mash of grain of which not less than 51% is wheat grain.

(f) "Straight malt whiskey" and "straight rye malt whiskey" are straight whiskey distilled from a fermented mash of grain of which not less than 51% of the grain is malted barley or malted rye, respectively.

(g) "Blended whiskey" (whiskey—a blend) is a mixture which contains at least 20% by volume of 100 proof straight whiskey and, separately or in combination, whiskey or neutral spirits, if such mixture at the time of bottling is not less than 80° proof.

(h) "Blended rye whiskey" (rye whiskey—a blend), "Blended bourbon whiskey" (bourbon whiskey—a blend), "Blended corn whiskey" (corn whiskey—a blend), "Blended wheat whiskey" (wheat whiskey—a blend), "Blended malt whiskey" (malt whiskey—a blend) or "Blended rye malt whiskey" (rye malt whiskey—a blend) is blended whiskey which contains not less than 51% by volume of straight rye whiskey, straight bourbon whiskey, straight corn whiskey, straight wheat whiskey, straight malt whiskey, or straight rye malt whiskey, respectively.

(i) "A blend of straight whiskeys" (blended straight whiskeys) "A blend of straight rye whiskeys" (blended straight rye whiskeys), "A blend of straight bourbon whiskeys" (blended straight bourbon

whiskeys), "A blend of straight corn whiskeys" (blended straight corn whiskeys), "A blend of straight wheat whiskeys" (blended straight wheat whiskeys), "A blend of straight malt whiskeys" (blended straight malt whiskeys), and "A blend of straight rye malt whiskeys" (blended straight rye malt whiskeys) are mixtures of only straight whiskeys, straight rye whiskeys, straight bourbon whiskeys, straight corn whiskeys, straight wheat whiskeys, straight malt whiskeys, or straight rye malt whiskeys, respectively.

(j) "Spirit whiskey" is a mixture (1) of neutral spirits and not less than 5%, by volume of whiskey, or (2) of neutral spirits and less than 20% by volume of straight whiskey, but not less than 5% by volume of straight whiskey, or of straight whiskey and whiskey, if the resulting product at the time of bottling be not less than 80° proof.

(k) "Scotch whiskey" is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of Great Britain regulating the manufacture of Scotch whiskey for consumption in Great Britain, and containing no distilled spirits less than three years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such mixture is "Blended Scotch whiskey" (Scotch whiskey—a blend). "Scotch whiskey" shall not be designated as "straight."

(l) "Irish whiskey" is a distinctive product of Ireland, manufactured either in the Irish Free State or in Northern Ireland, in compliance with the laws of those respective territories regulating the manufacture of Irish whiskey for consumption in such territories, and containing no distilled spirits less than three years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such whiskey is "Blended Irish whiskey" (Irish whiskey—a blend). "Irish whiskey" shall not be designated as "straight."

(m) "Canadian whiskey" is a distinctive product of Canada, manufactured in Canada in compliance with the laws of the Dominion of Canada regulating the manufacture of whiskey for consumption in Canada, and containing no distilled spirits less than two years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such whiskey is "Blended Canadian whiskey" (Canadian whiskey—a blend). "Canadian whiskey" shall not be designated as "straight."

(n) "Blended Scotch type whiskey" (Scotch type whiskey—a blend) is a mixture made outside Great Britain and composed of—

(1) Not less than 20% by volume of 100° proof malt whiskey or whiskeys distilled in pot stills at not more than 160° proof,

from a fermented mash of malted barley dried over peat fire, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof, and

(2) Not more than 80% by volume of neutral spirits, or whiskey distilled at more than 180° proof, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof.

(o)² "Blended Irish type whiskey" (Irish type whiskey—a blend) is a product made outside Great Britain or the Irish Free State and composed of—

(1) A mixture of distilled spirits distilled in pot stills at not more than 171° proof, from a fermented mash of small cereal grains of which not less than 50% is dried malted barley, and unmalted barley, wheat, oats, or rye grains, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof; or

(2) A mixture consisting of not less than 20% by volume of 100° proof malt whiskey or whiskeys distilled in pot stills at approximately 171° proof, from a fermented mash of dried malted barley, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof; and

(3) Not more than 80% by volume of neutral spirits, or whiskey distilled at more than 180° proof, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof.

CLASS 3. *Gins.*²—(a) "Distilled gin" is a distillate obtained by original distillation from mash, or by the redistillation of distilled spirits, over or with juniper berries and other aromatics customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures solely of such distillates.

(b) "Compound gin" is the product obtained by mixing neutral spirits with distilled gin or gin essence or other flavoring materials customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures of such products.

(c) "Dry Gin", "London Dry Gin", "Hollands Gin", "Geneva Gin", "Old Tom Gin", "Tom Gin", and "Buchu Gin" are the types of gin known under such designations, and shall be further designated as "distilled" or "compound", as the case may be.

²Amended July 8, 1936.

³Amended July 20, 1936.

CLASS 4.² Brandies.—(a) "Brandy" is a distillate, or a mixture of distillates, obtained solely from the fermented juice or mash of fruit (1) distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to brandy; and (2) bottled at not less than 80° proof; and shall also include such distillates, aged for a period of not less than fifty years, and bottled at not less than 72° proof, in cases where the reduction in proof below 80° is due solely to losses resulting from natural causes during the period of aging.

(b) "Brandy," without appropriate qualifying words, or "Grape Brandy," is the distillate obtained from grape wine or wines under the conditions set forth in subsection (a) of this class, and includes mixtures solely of such distillates.

(c) "Apple brandy" (Apple jack), "Peach brandy", "Cherry brandy", "Apricot brandy", "Orange brandy", "Raisin brandy", and other fruit brandies are distillates obtained from the fermented juice or mash of the respective fresh or dried or otherwise treated fruits under the conditions set forth in subsection (a) of this class, and includes mixtures composed wholly of one kind of such distillates. The designation shall contain the name of the fruit used, and if other than whole fresh fruit is used, the word "Dried" or such other term as may be appropriate. Brandy derived from raisins shall be designated as "Raisin brandy."

(d) "Cognac" or "Cognac brandy" is grape brandy distilled in the Cognac Region of France, which is entitled to be designated as "Cognac" by the laws and regulations of the French Government; and includes mixtures of such brandy.

CLASS 5. Rum.—(a) "Rum" is any alcoholic distillate from the fermented juice of sugarcane, sugarcane sirup, sugarcane molasses, or other sugarcane byproducts distilled at less than 190° proof (whether or not such proof is further reduced prior to bottling to not less than 80° proof) in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to rum; and includes mixtures solely of such distillates.

(b) "New England rum" is rum as above defined, except that it is produced in the United States, is distilled at less than 160° proof, and is a straight rum and not a mixture of rums.

(c) Puerto Rico, Cuba, Demerara, Barbados, St. Croix, St. Thomas, Virgin Islands, Jamaica, Martinique, Trinidad, Haiti, and San Domingo rum are not distinctive types of rum. Such names are not generic but retain their geographic significance. They may not be applied to rum produced in any other place than the par-

²Amended July 8, 1936.

ticular region indicated in the name, and may not be used as a designation of a product as rum, unless such product is rum as defined in subsection (a).

CLASS 6. *Cordials and liqueurs.*—(a) Cordials and Liqueurs are products obtained by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and to which sugar or dextrose or both have been added in an amount not less than $2\frac{1}{2}\%$ by weight of the finished product. Synthetic or imitation flavoring materials shall not be included.

(b) "Sloe gin" is a cordial or liqueur with the main characteristic flavoring derived from sloe berries.

(c) Cordials and liqueurs shall not be designated as "distilled" or "compound."

(d) *Dry cordials and dry liqueurs.*—The designation of a cordial or liqueur may include the word "Dry" if the added sugar and dextrose are less than 10% by weight of the finished product.

CLASS 7. *Imitations.*—(a) *General.*—Imitations include distilled spirits of any class or type, containing added rye or bourbon essence or similar whiskey flavoring material, or colored or flavored in such a manner as to simulate any other class or type of distilled spirits, and shall be designated by the name of such other class or type of distilled spirits immediately preceded by the word "Imitation." Subsections (b), (c), and (d) of this class specify imitations in addition to the foregoing.

(b) *Imitation brandy.*—(1) Neutral spirits or other distilled spirits which have added thereto or which contain synthetic or imitation brandy flavoring materials, (2) brandy which has added thereto neutral spirits or other distilled spirits than brandy, and (3) a distillate obtained from a fermented mash of fruit and sugar or dextrose are "imitation brandy", and shall be so designated.

(c) *Imitation rum.*—(1) Neutral spirits or other distilled spirits which have added thereto or which contain synthetic or imitation rum flavoring materials, and (2) rum which has added thereto neutral spirits or other distilled spirits than rum are "imitation rum", and shall be so designated.

(d) *Imitation cordials and liqueurs.*—Neutral spirits, brandy, gin, or other distilled spirits which have added thereto or which contain synthetic or imitation fruit, flower, plant, or other imitations of natural flavoring materials shall not include in the designation thereof the name of such fruit, flower, plant, or other natural flavoring material, unless immediately preceded by the word "Imitation."

(e) *Harmless coloring or flavoring materials.*—Notwithstanding the foregoing subsections of this class, the addition of harmless coloring or flavoring materials, such as burnt sugar and blending materials (including straight malt whiskey, or straight rye malt whiskey), in a total amount not in excess of 2½% of the distilled spirits by volume, shall not, except in the case of straight whiskey, alter the class or type of any distilled spirits, provided such coloring and flavoring materials do not have the effect of imitating any class or type of distilled spirits. Whether or not distilled spirits containing such materials in excess of such total amount are imitations shall be governed by the provisions of subsection (a) of this class.

CLASS 8. *Geographical designations.*—(a) Geographical names for distinctive types of distilled spirits (other than names found by the Administrator under subsection (b) to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless (1) in direct conjunction with the name there appears the word "type" or the word "American," or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name, and (2) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish Punch, Blended Scotch Whiskey, Blended Irish Whiskey, Blended Canadian Whiskey. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this article, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type. Such geographical names for distinctive types of distilled spirits shall not be used as the name or a part of the name for distilled spirits not of that distinctive type.

(b) Only such geographical names for distilled spirits as the Administrator finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic, shall be deemed to have become generic. The following are examples of distinctive types of distilled spirits with geographical names that have become generic: London Dry Gin, Geneva Gin, Hollands Gin, Tequila.

(c) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. The following are examples of geographical names for distilled spirits that are not generic and are not names for distinctive types of distilled spirits:

Cognac, Armagnac, Greek Brandy, Pisco Brandy, Jamaica Rum, Kentucky Straight Bourbon Whiskey, Maryland Straight Rye Whiskey.

CLASS 9. Products without geographical designations but distinctive of a particular place.—(a) The whiskeys of the types specified in paragraphs (a) to (j), inclusive, of class 2 of this article, are distinctive products of the United States, and if produced in a foreign country, shall be designated by the applicable designation prescribed in such paragraph, together with the words "American Type" or the words "Produced (Distilled, Blended) in —", the blank to be filled in with the name of the foreign country.

(b) The name for other distilled spirits which are distinctive products of a particular place or country shall not be given to the product of any other place or country unless the designation for such product includes the word "Type" or an adjective such as "American" or the like, clearly indicating the true place of production. This paragraph shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that they have become generic, provided the approval of the Administrator is obtained prior to using such designation. An example of a product which is a distinctive product of a particular place or country and which has not become generic is the following: Habanero. Examples of products which have lost their geographical significance to such an extent that they are no longer distinctive products of a particular place or country, but have become generic, are the following: Vodka, Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

ARTICLE III. LABELING REQUIREMENTS FOR DISTILLED SPIRITS

SEC. 30. General—(a) *Application of this article.*—No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such distilled spirits are packaged, and such packages are marked, branded, or labeled in conformity with this article. Distilled spirits domestically bottled prior to August 15, 1936,¹ and imported distilled spirits entered in customs bond in bottles prior to that date shall be regarded as being packaged, marked, branded, and labeled in accordance with this article, if the labels on such distilled spirits (1) bear all the mandatory label information required by Section

¹As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

32 below even though such information is not set forth in the manner and form as required by Section 32 and the other sections of this article referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(b) *Alteration of labels.*—

- (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law; *Provided*, That the Administrator may, upon written application, permit additional labeling or relabeling of bottled distilled spirits if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this article or of State law.
- (2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels together with a statement of the reasons for relabeling; the quantity and the location of the distilled spirits, and the name, address, and permit number of the person by whom they will be relabeled.

SEC. 31. *Misbranding.*—Distilled spirits in bottles shall be deemed to be misbranded—

(a) If the bottle fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by this article and conforming to the general requirements specified herein.

(b) If the bottle or any label on the bottle, or any individual covering, carton, or other container of the bottle used for sale at retail, other than a shipping container, or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by this article.

(c) If the bottle is in an individual covering, carton, or other container used for sale at retail, other than a shipping container, displaying thereon any written, printed, graphic, or other matter, other than the name and address of the manufacturer, importer, or person by whom bottled (and in addition the name and address of the person for whom bottled), and such individual covering, carton, or other container obscures the mandatory label information required to be stated and such individual covering, carton, or other container fails to reproduce on it, in the same manner, all information so obscured; or if any statement required by this article to appear upon the label, or upon such individual covering, carton, or other con-

tainer of the bottle, is obscured in any other manner or is modified in any manner.

SEC. 32. *Mandatory label information.*—There shall be stated—

(a) On the brand label—

- (1) Brand name, in accordance with Section 33 below.
- (2) Class and type, in accordance with Section 34 below.
- (3) Name and address, in accordance with Section 35 below, except as provided in (b) hereof.

(b) On the brand label or on a separate label (back or front)—

- (4) In case of imported distilled spirits, name and address of importer, in accordance with Section 35 below.
- (5) In the case of distilled spirits bottled for the holder of a permit or a retailer, the name and address of the distiller, blender, or bottler, in accordance with Section 35 below.

(c) On a separate label (for the purpose of these regulations to be known as the Government label), in such manner and form as shall be prescribed by the Administrator—

- (6) Alcoholic content, in accordance with Section 36 below.
- (7) Net contents, in accordance with Section 37 below.
- (8) Artificial or excessive coloring or flavoring, in accordance with Section 38 below.
- (9) Percentage of neutral spirits and name of commodity from which distilled, or in case of continuously distilled neutral spirits or gin the name of the commodity only, in accordance with Section 38 below.
- (10) Age of whiskey and straight whiskey, and respective percentages of whiskey, straight whiskey, and neutral spirits, in accordance with Section 39 below.
- (11) State of distillation of domestic types of whiskey and straight whiskey, except blends, in accordance with Section 35 below.

The mandatory information required by any of the subdivisions of subsection (c) to be stated on a separate label may, if desired, reappear or be restated on the brand label, in which event there shall also reappear or be restated all information required to be stated in conjunction therewith by such separate subdivision and the section to which such subdivision refers. If it is desired, all of the mandatory information required by subsection (c) may appear on the brand label in lieu of a separate label.

SEC. 33. *Brand names.*—(a) *General.*—The distilled spirits shall bear a brand name, except that if distilled spirits are not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this article.

(b) *Brand names of geographical significance.*—The word "Brand" shall be stated in direct conjunction with a brand name containing a geographical name or adjective as a part or the whole thereof, in type at least one-half the size of the type in which such geographical name or adjective appears on the label, unless such distilled spirits were in fact produced in such place: *Provided*, That if such product was not in fact produced in the place or region indicated by such brand name, and the Administrator finds that the general appearance of the label, or any statement, design, or device appearing thereon, tends to create the impression that the product is of foreign origin or was produced in a place or region other than that of actual production, he may require, in addition to the word "Brand", other appropriate language which will indicate the true place of production.

(c) This section shall not apply to the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, it shall be qualified by the name of the locality in the United States in which the product is produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand which it qualifies and shall be in direct conjunction therewith.

Sec. 34. *Class and type.*—(a) The class of the distilled spirits shall be stated. If the particular distilled spirits are a type of such class and if such type is defined in Article II of these regulations, then such type shall also be stated. The class or type stated shall be in conformity with Article II of these regulations, if such class or type is defined therein. If either the class or type stated is not defined in Article II of these regulations, then any statement of such class or type shall be in conformity with the trade designation of such product, if such designation has not been adopted in Article II of these regulations as the designation of another product: *Provided*, That if there is no trade designation, the product shall be given a distinctive or fanciful name, or an accurate and truthful statement of its true composition shall be made on the brand label. Notwithstanding the foregoing provisions of this section, the words "cordial" or "liqueur" need not be stated to indicate the class of distilled spirits which in fact are cordials or liqueurs, unless the Administrator finds that, without a designation of the class, the type designation is one which does not clearly indicate to the consumer that the product is a cordial or liqueur.

(b)² The labeling of any bottled highballs, cocktails, gin fizzes, and other prepared specialties shall state, in conformity with subsection (a), the classes and types of distilled spirits used in the manufacture thereof. Any such statement of class and type may, but need not, be stated as part of the designation of the product. If not made a part of the designation of the product, then such class and type statement shall be stated elsewhere upon the brand label or on a separate label affixed in immediate proximity thereto on the same side of the bottle.

(c) On labels of cordials and liqueurs, the type of distilled spirits used for mixing or redistillation, and the percentage of each type thereof, may, but need not, be stated. Any such statement shall be substantially in accordance with the following examples: Apricot liqueur—the distilled spirits used are all apricot brandy; Cherry cordial—the distilled spirits used are all grape brandy; Pineapple liqueur—the distilled spirits used are 30% distilled London dry gin, 70% neutral spirits.

SEC. 35. *Name and address.*—(a) “*Distilled by.*”—On labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words “distilled by”, and immediately thereafter the name of such distiller and the place where distilled.

(b) “*Blended by*”, “*Made by*”, “*Prepared by*”, “*Manufactured by*”, or “*Produced by*.”—On labels of domestic distilled spirits bottled by or for the actual rectifier thereof, there shall be stated the words “blended by”, “made by”, “prepared by”, “manufactured by”, or “produced by”, whichever may be applicable, and immediately thereafter the name of the rectifier and the place where blended, made, or prepared.

(c)² “*Imported by.*”—

(1) On labels of imported distilled spirits, bottled prior to importation, there shall be stated the words “imported by”, “imported exclusively by”, or a similar appropriate phrase, and immediately thereafter the name of the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

(2) On labels of imported distilled spirits bottled after importation by a person other than the person responsible for the importation, there shall be stated, in the manner and form prescribed above, the name and address of the person responsible for the importation, and in addition thereto the words “bottled by”, and immediately thereafter, the name of the bottler and the place where bottled.

²Amended July 8, 1938.

(3) On labels of imported distilled spirits bottled after importation by the person responsible for the importation, there shall be stated the words "imported and bottled by", "imported and bottled exclusively by", or a similar appropriate phrase, and immediately thereafter, the name of the bottler and the place where bottled.

(4) The statements provided for domestic distilled spirits by subsections (a) and (b), if applicable, may, but need not, appear on labels of imported bottled distilled spirits, unless required by State or foreign law or regulation. If required by State or foreign law or regulation, they shall appear in accordance with the requirements thereof.

(d) "*Bottled by*."—On labels of domestic distilled spirits bottled without taxable rectification by the holder of a warehousing and bottling permit, or by any State or political subdivision thereof, who is not the actual distiller or rectifier of such distilled spirits, there shall be stated the words "Bottled by", and immediately thereafter the name of the bottler and the place where bottled.

(e)² "*Bottled for*."—In addition to the requirements of (a), (b), (c) and (d) of this section, on labels of distilled spirits bottled for the holder of a permit, or a retailer, who is not the actual distiller or rectifier of such distilled spirits, there may be stated the name and address of the permittee or retailer for whom such distilled spirits are so bottled, immediately preceded by the words "bottled for", or "distributed by", or other similar statement.

(f) *Post office address.*—The "place" stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, firm, or corporation, unless (1) such person or retailer is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(g) *State of distillation.*—On labels of whiskey and straight whiskey there shall be stated the State of distillation of such whiskey, if such whiskey is not distilled in the State given in the address on the brand label. Notwithstanding the provisions of Section 9 (o), the statement of the State of distillation shall appear on the brand label in all cases where the Administrator finds that without such statement the label is misleading as to the State of actual distillation.

²Amended July 8, 1938.

(h) *Trade names.*—The trade name of any permittee appearing upon any label shall be identical with the name in which his basic permit is issued by the Administrator.

SEC. 36. *Alcoholic content.*—(a) The alcoholic content by proof shall be stated for distilled spirits except as provided in subsection (b) of this section.

(b) The alcoholic content in percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Administrator from time to time.

SEC. 37. *Net contents.*—(a) The net contents shall be stated as follows:

- (1) If one pint, one quart, or one gallon, the net contents shall be so stated.
- (2) If less than a pint, the net contents shall be stated in fractions of a pint.
- (3) If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart.
- (4) If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon.

(b) All fractions shall be expressed in their lowest denomination.

(c) The net contents need not be stated on any label if the net contents are displayed by having the same blown in the bottle on the same side of the bottle as the brand label, in letters and figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part. The letters and figures shall be not less than one-quarter inch in height, except in case of bottles having a capacity of less than one-half pint, in which case the letters and figures shall be of such size as to be readily legible under ordinary conditions.

SEC. 38. *Presence of neutral spirits and coloring, flavoring, and blending materials.*—(a) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "_____ % neutral spirits distilled from grain"; or "_____ % neutral spirits distilled from cane products"; or "_____ % neutral spirits distilled from fruit"; or "_____ % grain (cane products), (fruit) neutral spirits."

(b) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled.

The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit".

(c) If the aggregate amount of coloring, blending, smoothing, or flavoring materials in any distilled spirits other than cordials, liqueurs, gin, gin fizzes, highballs, bitters, and such other specialties as may be specified by the Administrator from time to time, is in excess of $2\frac{1}{2}\%$ by volume of the distilled spirits contained in the bottle, then the name and amount in percent by volume of each of such materials shall be stated.

(d) There shall be stated the words "artificially colored" on the label of any distilled spirits containing synthetic or imitation coloring materials: *Provided*, That this statement shall not be required by reason of the use of caramel in coloring any type of whiskey (not including straight whiskey) brandy, or rum.

(e) The presence of beading oil in any type of whiskey shall be stated.

SEC. 39. *Statements of age and percentage.*—(a) *Statement of age and percentage for whiskey.*—There shall be stated in the case of whiskey (except Scotch, Irish, and Canadian and blended Scotch, Irish, and Canadian whiskey, as defined in Article II, section 21, class 2, and except straight whiskey bottled under the Bottling in Bond Act of the United States, in which cases statement of age shall be optional) the following:

(1) *Whiskey.*—In the case of whiskey (as defined in Article II, Section 21, Class 2 (a)), if not mixed, the age of the whiskey; if mixed, the age of the youngest whiskey. The statement of age in both cases under this paragraph shall be as follows: "This whiskey is — months old."

(2) *Straight whiskey.*—In the case of any of the types of straight whiskey, the age of the straight whiskey. The statement of age in cases under this paragraph shall be as follows: "This whiskey is — (years and/or months) old."

(3) *Blended whiskey.*—In case of any of the types of blended whiskey as defined in Article II, Section 21, Class 2 (g) and (h), the age of the straight whiskey (or if there be two or more straight whiskeys, then of the youngest thereof) and the age of the other whiskey (or if there be two or more other whiskeys, then of the youngest of such other whiskeys) together with the percentage by volume of straight whiskey, other whiskey, and neutral spirits, therein.

The statement of age in cases under this paragraph shall be as follows, in accordance with the ingredients used. If only one straight whiskey and one other whiskey is in the blend, the statement of the age shall read "The straight whiskey in this product is _____ (years and/or months) old, _____ % straight whiskey, _____ % other whiskey _____ (years and/or months) old." The age blanks shall be filled in with the respective ages of the straight whiskey and the other whiskey. If more than one straight whiskey and more than one other whiskey is in the blend, the statement of age shall read "The straight whiskeys in this product are _____ (years and/or months) or more old, _____ % straight whiskey, _____ % other whiskey _____ (years and/or months) or more old." The age blanks shall be filled in with the ages of the youngest straight whiskey and the youngest of the other whiskeys. If neutral spirits have been used in the blend, the statement thereof shall appear in immediate conjunction with the statement of age and percentage amounts of straight whiskey and other whiskey (if any) and shall be in the form required by Section 38(a).

In addition (but not as a substitute for the foregoing required statements) a statement may be made of the ages and percentages of all of the straight whiskeys in the blend. Such statements, if made, shall read "_____ % straight whiskey, _____ years old, _____ % straight whiskey, _____ years old, and _____ % straight whiskey, _____ years old." The age and percentage blanks shall be filled in with the respective ages and percentages of all of the straight whiskeys in the blend.

- (4) *Blends of straight whiskeys.*—If the product is a blend of straight whiskeys, the age of the youngest straight whiskey. The statement of age under this paragraph shall be as follows: "The straight whiskeys in this product are _____ (years and/or months) or more old." The blank shall be filled in with the age of the youngest straight whiskey in the blend. In addition (but not as a substitute for the foregoing required statement) a statement may be made of the ages and percentages of all of the straight whiskeys in the blend. Such statements, if made, shall read: "_____ % straight

whiskey, _____ years old, _____% straight whiskey, _____ years old, and _____% straight whiskey, _____ years old." The age and percentage blanks shall be filled in with the respective ages and percentages of all of the straight whiskeys in the blend.

(5) *Spirit whiskey.*—In the case of spirit whiskey, the age of the whiskey or straight whiskey (or if there be two or more whiskeys or straight whiskeys, then the youngest whiskey or straight whiskey) together with the percentage by volume of the whiskey or straight whiskey and the percentage by volume of neutral spirits. Such statement shall be as follows: "The whiskey (straight whiskey) in this product is _____ (years and/or months) old; _____% straight whiskey, _____% whiskey, and _____% neutral spirits (continuing in accordance with the requirements of Sec. 38 (a) to state the commodity from which the neutral spirits is derived)." If there be either no straight whiskey or whiskey in product, the percentage statement with respect thereto shall be omitted.

(6) *Imported American type whiskeys.*—In the case of imported American type whiskeys (as defined in Article II, Section 21, Class 9) the labels shall state the ages and percentages in the same manner and form as is required for the same type of whiskey produced in the United States.

(b) *Statements of Age for Rum, Brandy, Scotch, Irish, and Canadian Whiskeys, and Blended Scotch, Blended Irish, and Blended Canadian Whiskeys.*—

(1) Age may, but need not, be stated on labels of rums, brandies, Scotch whiskeys, Irish whiskeys, Canadian whiskeys, blended Scotch whiskeys, blended Irish whiskeys, and blended Canadian whiskeys, as defined in Article II of these regulations.

(2) If age is stated, it shall be substantially as follows: "This rum is _____ years old"; "This brandy is _____ years old"; "This whiskey is _____ years old"; the blanks to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statements of Age and Percentage for Blended Scotch Type Whiskey and Blended Irish Type Whiskey.*—

(1) In the case of blended Scotch type whiskey, there shall be stated the age of the youngest malt whiskey and the

age of the youngest other whiskey, together with the percentages by volume of the malt whiskey and of the other whiskey therein. The statement of age and percentage shall be in the following form: "The malt whiskey in this product is _____ (years and/or months) old; _____ % malt whiskey, _____ % other whiskey, _____ (years and/or months) old." If the product is composed of malt whiskey and neutral spirits, there shall be stated the age of the youngest malt whiskey, together with the percentage by volume of malt whiskey and the percentage by volume of neutral spirits. Such statement shall be in the following form: "The malt whiskey in this product is _____ (years and/or months) old; _____ % malt whiskey, _____ % neutral spirits (continuing in accordance with the requirements of Sec. 38 (a) to state the commodity from which the neutral spirits is derived)."

- (2) In the case of blended Irish type whiskey, as defined in Article II, Section 21, Class 2 (o) (1), there shall be stated the age of the youngest whiskey. The statement of age shall be as follows: "This whiskey is _____ (years and/or months) old."
- (3) In the case of blended Irish type whiskey, as defined in Article II, Section 21, Class 2 (o) (2), there shall be stated the age of the youngest malt whiskey and the age of the youngest other whiskey, together with the percentages by volume of the malt whiskey and of the other whiskey therein. The statement of age and percentage shall be in the following form: "The malt whiskey in this product is _____ (years and/or months) old; _____ % malt whiskey, _____ % other whiskey, _____ (years and/or months) old." If the product is composed of malt whiskey and neutral spirits, there shall be stated the age of the youngest malt whiskey, together with the percentage by volume of malt whiskey and the percentage by volume of neutral spirits. Such statement shall be in the following form: "The malt whiskey in this product is _____ (years and/or months) old; _____ % malt whiskey, _____ % neutral spirits (continuing in accordance with the requirements of Sec. 38 (a) to state the commodity from which the neutral spirits is derived)."

(d) *Other distilled spirits.*—Age, maturity, or similar statements or representations as to neutral spirits, gin, liqueurs, cordials, vodka,

cocktails, gin fizzes, highballs, bitters, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.*—

(1) If the age of any product for which age is required to be stated is in excess of one year, months in excess of a year may be omitted, and if the age is less than one month, the age shall be stated as "Less than one month" in lieu of "_____ (years and/or months)."

(2) Age may be understated but may not be overstated.

(3) Any permissive additional statements as to age shall appear on the same labels as the required statements and only in direct conjunction therewith and in substantially the same size and kind of print. Any such additional permissive statements as to age not in direct conjunction with the required statements are prohibited, and all statements as to age other than the required statements, the additional permissive statements, and the optional statements for distilled spirits are prohibited. Additional permissive age and percentage statements shall not be given prominence, either by position or color, over required age and percentage statements.

(4) Variations in the form of the required statements or the additional permissive statements as to age and percentages are prohibited.

(5) *Use of the word "old", or other representations as to age.*—If any age, maturity, or similar representation (including words or devices in any brand name or mark) is made relative to any distilled spirits (except neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, and bitters), the age shall also be stated on all labels where such representation appears, and in script, type, or printing substantially as conspicuous as such representation. Age, maturity, or similar representations as to neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, and bitters, are misleading, and shall not appear upon any label, except that the use of the word "old" or other word denoting age, appearing as part of the brand name, shall not be deemed to be an age representation in the case of such distilled spirits, or in the case of distilled spirits bottled in bond under the Bottling in Bond Act of the United States. As to all other distilled spirits, the word "old" or other word denoting

age, appearing as part of the brand name, shall be deemed to be an age representation unless the word "brand" appears in direct conjunction with such brand name in letters of equally conspicuous color and at least one-half the size of the type in which such brand name is printed.

SEC. 40. *General requirements.*—(a) *Contrasting background.*—All labels shall be so designed that all the statements thereon required by this article are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.*—All statements required on labels by this article shall be in readily legible script, type, or printing not smaller than eight-point Gothic caps, except that if contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter: *Provided*, That in the case of labels on bottles having a capacity of less than one-half pint, such script, type, or printing thereon need not be in eight-point Gothic caps, but shall be readily legible under ordinary conditions. All statements of the type of distilled spirits shall be in script, type, or printing substantially as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(c) *English language.*—All the requirements of this article shall be stated on all labels in the English language: *Provided*, That the brand name, the place of production, and the name of the producer appearing on labels need not be in the English language if the words "product of" immediately precede the name of the country in which the distilled spirits were produced in accordance with customs requirements. Additional statements in foreign languages may be made on labels, if no such statements conflict with, or are contradictory to, the requirements of this article. Labels on bottles of distilled spirits bottled for consumption within Puerto Rico may, if desired, state the information required by this article solely in the Spanish language, in lieu of the English language, except that the net contents, and, if an imitation, the word "imitation" shall also be stated in the English language.

(d) *Location of label.*—No label other than stamps authorized or required by the United States Government or any other government, shall be affixed over the mouths of bottles of distilled spirits, and no label shall obscure any government stamp or be obscured thereby, or obscure any markings or information required to be blown in the bottle by regulations of the Secretary of the Treasury.

(e) *Labels firmly affixed.*—All labels shall be affixed to bottles of distilled spirits in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.*—Labels (other than the label to be known for the purposes of these regulations as the government label) may contain information other than the mandatory label information required by this article, provided such information complies with the requirements of this article, and does not conflict with, nor in any manner qualify, statements required by any regulations promulgated under the Act.

(g) *Representations as to materials.*—If any representation (other than representations or information required by this article) is made as to the presence, excellence, or other characteristic of any ingredient in any distilled spirits, or used in the production thereof, the label containing such representation shall state in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient, except that percentages of whiskey, where stated, shall be stated as provided in Section 39: *Provided*, That no statement shall appear on any label with reference to the use of selected or choice grain, fruit, herbs, or other materials in the distilled spirits, or in the production thereof, unless such materials are of a higher grade than that customarily used in the industry, and then only if the Administrator has previously found, on the basis of evidence submitted to him, that such materials are of such higher grade. If only a portion of the materials used is of such higher grade, then the percentage thereof that is of such higher grade shall be stated in direct conjunction with such statement, in print, type, or script, substantially as conspicuous as that used in connection with such statement.

(h) Upon request of the Administrator, there shall be submitted to him a full and accurate statement of the contents of the bottles to which labels are to be or have been affixed.

SEC. 41. *Prohibited practices.*—(a) *Statements on labels.*—Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain—

(1) Any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression. Examples of such prohibited statements are:

Reproductions of medals or facsimiles of awards, when no medals or awards have been given for the particular product.

The statement that the product is "100% straight whiskies", when in fact the product is less than 100 proof.

The statement that "Fine Flavored, Genuine Bourbon Whiskey is Made Only in Kentucky."

Domestic products containing the statement "Furnished to His Majesty, the King of -----"

"Due to our method of storage, this product ages in half the time."

"This whiskey is two months old. Due to our special aging process, however, it has the taste and characteristics of a much older whiskey."

"This whiskey is four months old. Due to our special manufacturing processes, this whiskey has all the characteristics of a one year old whiskey."

"Distilled from a scientifically controlled fermentation under laboratory control."

(2) Any statement that is disparaging of a competitor's products. Examples of such prohibited statements are:

"Contains no neutral spirits or alcohol."

"Matured naturally—not heat treated."

"Not a compound, but a delicious distilled dry gin."

"Should not be confused with imitations that are made from neutral spirits."

"Contains no headaches."

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer. Examples of such statements are:

"From 20 to 30 scientific determinations are required for each bottle tested."

"Analyzed by State laboratories and found to be pure and free from deleterious ingredients."

"Chemical analysis shows this whiskey to contain the flavoring, aroma, and other characteristics of four year old whiskey", when in fact such whiskey is less than four years old.

"Before bottling it is subjected to the most rigid tests for its taste, bouquet, and aroma, by our technical staff", signed by _____, B. Ch. E.

The statement that "The _____ Laboratories, recognized expert authority, tests and judges _____ products."

The statement "Tasted and Approved", signed by The _____ Research Institute.

The statement "Tasted and Tested to Assure the Highest Quality Flavoring and Freedom from Destructive Ingredients."

- (5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer. Nothing herein shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

_____,
 (Blank to be filled in with the name of the
 permittee making guaranty.)

Examples of such statements are:

"Guaranteed to consumer by _____."

"Warranted to be the best product in its price range."

"Certified to be pure and free from deleterious matter."

"Guaranteed to be ten years old."

"Guaranteed to be distilled in the State of _____."

"Attested to be made by modern, scientific manufacturing processes."

- (6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this subsection shall not apply to the use of the name of any person

engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Simulation of Government stamps, etc.—*

- (1) No label shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign Government. No label, other than stamps authorized or required by this or any other Government, shall state or indicate that the distilled spirits contained in the labeled bottle are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, or municipal law or regulations, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.
- (2) If imported distilled spirits are labeled Scotch whiskey, blended Scotch whiskey, Irish whiskey, blended Irish whiskey, Canadian whiskey, blended Canadian whiskey, rum, brandy, or Cognac, or are labeled as whiskey of an American type, and such distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of the other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the

to submit ~~to~~ ~~submit~~ ~~to~~ government (name of government) indicating that the product is ~~.....~~ (class and type as required to be stated on the label), and (if label claims age, that none of the distilled spirits are of an age less than stated on this label.)

(3) * *Domestic "Bottled in Bond" Spirits.*—The words "Bond", "Bonded", "Bottled in Bond", "Aged in Bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless such distilled spirits were in fact bottled in bond under the Bottling in Bond Act of the United States.

(4) *Imported "Bottled in Bond" Spirits.*—The words "Bond", "Bonded", "Bottled in Bond", "Aged in Bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless such distilled spirits, as to proof and age, and in all other respects, meet the requirements applicable to distilled spirits bottled, for domestic consumption, under the Bottling in Bond Act of the United States; and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as "Bonded", "Bottled in Bond", or "Aged in Bond" pursuant to the provisions of this paragraph shall bear in direct conjunction with such statement and in script, type or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(c) *Use of word "pure."*—The word "pure" shall not be stated in any manner on any labels, except as part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled.

(d) *Use of "double distilled" or similar terms.*—No gin or other distilled spirits shall be labeled as "double distilled" or "triple distilled", or any similar term.

(e) *Statements, seals, flags, coats of arms, crests, and other insignia.*—Statements, seals, flags, coats of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, the government,

organization, family, or individual with whom such seal, flag, coat of arms, crest, or insignia is associated, are prohibited on any label of distilled spirits.

(f) *Curative and therapeutic effects.*—Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(g) *Individual coverings and cartons.*—Individual coverings, cartons, or other containers of bottled distilled spirits, or any written, printed, graphic, or other matter accompanying the bottle shall not contain any statement or any graphic, pictorial, or emblematic representation or other matter which is prohibited from appearing on any label or bottle of distilled spirits.

ARTICLE IV. REQUIREMENTS FOR WITHDRAWAL FROM CUSTOMS

CUSTODY OF BOTTLED IMPORTED DISTILLED SPIRITS

Sec. 45. *Label approval and release.*—(a) On or after August 15, 1936,¹ bottled distilled spirits shall not be released from customs custody for consumption, except pursuant to procedure and form prescribed by this Article.

(b) No bottled distilled spirits shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry an "Affidavit for Release of Distilled Spirits" (Form L. 3), which document shall be properly filled out and sworn to by the importer or transferee in bond, covering the particular brand or lot of distilled spirits sought to be released and which document shall be accompanied by the original or a photostatic copy firmly attached thereto of a "Certificate of Label Approval and Release for Imported Distilled Spirits" (Form L. 2). Such certificate shall be issued by the Administrator upon application made on the form designated "Application for Approval of Labels for Distilled Spirits Imported in Bottles" (Form L. 1), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.*—If the "Affidavit for Release of Distilled Spirits" (Form L. 3) is accompanied by the original or a photostatic copy of the "Certificate of Label Approval and Release for Imported Distilled Spirits" (Form L. 2) the certificate of which bears the signature of the officer designated by the Administrator, then the brand or lot of bottled distilled spirits bearing labels identical with those shown on the original or a photostatic copy may be released from customs custody.

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

(d) *Relabeling.*—Distilled spirits in customs custody which are not labeled in conformity with certificates of label approval issued by the Administrator must be relabeled prior to release, under the supervision and direction of the Customs officers of the port at which such distilled spirits are located.

SEC. 46. *Certificates of origin and age.*—

(a) Scotch, Irish, and Canadian whiskeys, in bottles, whether blended or unblended, imported on or after August 15, 1936,¹ shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian Governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whiskey, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whiskey for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If the label of any Scotch, Irish, or Canadian whiskey, whether blended or unblended, imported in bottles on or after August 15, 1936,¹ contains any statement of age for Scotch or Irish whiskey in excess of three years, or Canadian whiskey in excess of two years, the whiskey shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying that none of the distilled spirits in the bottle are of an age less than that stated on the label. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers.

(c) If the label of any rum, brandy, or cognac, imported in bottles on or after August 15, 1936,¹ contains any statement of age, the rum, brandy, or cognac shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the Government of the foreign country in which the rum, brandy, or cognac was produced, certifying that none of the distilled spirits in the product are of an age less than that stated on the label. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Cognac in bottles, imported on or after August 15, 1936,¹ shall not be released from customs custody unless the invoice is accompanied by a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

product is grape brandy distilled in the Cognac Region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) American type whiskeys imported on or after August 15, 1936,¹ shall not be released from customs custody in bottles unless there is presented at the time of entry or at the time of request for release, a certificate issued by a duly authorized official of the appropriate foreign government certifying:

In case of straight whiskey, (1) the class and type, (such as straight whiskey, straight rye whiskey, straight bourbon whiskey, etc.), thereof, (2) the American proof at which distilled, (3) that no neutral spirits or other whiskey has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, and (4) the age of the whiskey;

In case of distinctive types of whiskey, (1) the class and type (such as rye whiskey, bourbon whiskey, etc.), (2) the American proof at which distilled, (3) that no neutral spirits has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, and (4) the age of the whiskey;

In case of blended whiskey, (1) the class and type (such as blended whiskey, blended rye whiskey, blended bourbon whiskey, etc.), (2) the percentage of straight whiskey, or any distinctive type thereof, used in the blend, (3) the American proof at which the straight whiskey was distilled, (4) the percentage of other whiskey, if any, in the blend, (5) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled, and (6) the age of the straight whiskey and the age of the other whiskey, if any, in the blend.

The age certified shall be the period during which, after distillation and before bottling, the whiskey has been kept in charred oak containers.

ARTICLE V. REQUIREMENTS FOR APPROVAL OF LABELS OF DOMESTICALLY BOTTLED DISTILLED SPIRITS

Sec. 50. *Certificates of label approval.*—(a) No person shall bottle distilled spirits, other than distilled spirits in customs custody, or remove such spirits from his bottling plant unless upon application to the Administrator he has obtained, and has in his possession, a "Certificate of Approval of Labels of Domestically Bottled Distilled

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

Spirits" (Form L. 5), covering such distilled spirits. Such certificate of label approval shall be issued by the Administrator upon application made on the form designated "Application for Approval of Labels of Domestically Bottled Distilled Spirits" (Form L. 4), properly filled out and certified to by the permittee.

(b) Any bottler of distilled spirits shall be exempt from the requirements of this Article if upon application he shows to the satisfaction of the Administrator that the distilled spirits to be bottled by him are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. A "Certificate of Exemption from Label Approval for Distilled Spirits" (Form L. 7) shall be issued by the Administrator upon application made on the form designated "Application for Exemption from Distilled Spirits Label Approval" (Form L. 6), properly filled out and certified to by the permittee.

SEC. 51. *Certificates of age and origin.*—(a) Scotch, Irish, and Canadian whiskeys, whether blended or unblended, imported in bulk on or after August 15, 1936,¹ and bottled in the United States, shall not be labeled as Scotch, Irish, or Canadian whiskeys respectively, unless the bottler possesses a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whiskey, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whiskey for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If any Scotch, Irish, or Canadian whiskey, whether blended or unblended, is imported in bulk on or after August 15, 1936,¹ and bottled in the United States, no statement shall appear on the label thereof representing the age of such Scotch or Irish whiskey to be in excess of three years, or Canadian whiskey in excess of two years, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such distilled spirits issued by a duly authorized official of the appropriate foreign government certifying as to age of such whiskey. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers.

(c) If any rum or brandy is imported in bulk on or after August 15, 1936,¹ and bottled in the United States, no statement of age shall appear on the labels of such rum or brandy, unless the permittee authorized to bottle such distilled spirits possesses a certificate issued

¹ As amended Feb. 20, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

by a duly authorized official of the government of the foreign country in which the rum or brandy was produced, certifying as to the age of such rum or brandy. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Brandy imported in bulk on or after August 15, 1936,¹ and bottled in the United States, shall not be labeled as "Cognac" unless the permittee authorized to bottle such distilled spirits possesses a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the product is grape brandy distilled in the Cognac Region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) Distilled spirits imported in bulk on or after August 15, 1936,¹ and bottled in the United States with or without taxable rectification, shall not be labeled as any type of American whiskey, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such whiskey issued by a duly authorized official of the appropriate foreign government certifying:

In case of straight whiskey: (1) the class and type (such as straight whiskey, straight rye whiskey, straight bourbon whiskey, etc.) thereof; (2) the American proof at which distilled; (3) that no neutral spirits or other whiskey has been added as a part thereof or included therein, whether or not for the purpose of replacing outage; and (4) the age of the whiskey (the period during which the whiskey has been kept in charred oak containers);

In case of distinctive types of whiskey: (1) the class and type (such as rye whiskey, bourbon whiskey, etc.); (2) the American proof at which distilled; (3) that no neutral spirits has been added as a part thereof or included therein, whether or not for the purpose of replacing outage; and (4) the age of the whiskey (the period during which the whiskey has been kept in charred oak containers);

In case of blended whiskey: (1) the class and type (such as blended whiskey, blended rye whiskey, blended bourbon whiskey, etc.); (2) the percentage of straight whiskey, or any distinctive type thereof, used in the blend; (3) the American proof at which the straight whiskey was distilled; (4) the percentage of other whiskey, if any, in the blend; (5) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled; and (6) the age of the straight whiskey and the age of the other whiskey, if any, in

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the day "August 15, 1936" read "March 1, 1936."

the blend (the period during which the whiskies have been kept in charred oak containers); and unless the labels are in all particulars consistent with the facts stated in the certificate.

SEC. 52. *Exhibiting certificates to Government officials.*—Any bottler holding an original or duplicate original of a certificate of label approval or a certificate of exemption, shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government.

SEC. 53. *Photoprints.*—Photoprints or other reproductions of certificates of label approval or certificates of exemption are not acceptable, for the purposes of this article, as substitutes for an original or duplicate original of a certificate of label approval, or a certificate of exemption. The Administrator will, upon the request of the bottler, issue duplicate originals of certificates of label approval or certificates of exemption if distilled spirits under the same brand are bottled at more than one plant by the same permittee, and if the necessity for the duplicate original is shown and there is listed with the Administrator the name and address of the additional bottling plant where the particular label is to be used.

ARTICLE VI.—ADVERTISING OF DISTILLED SPIRITS

SEC. 60. *Application of this article.*—No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with this article: *Provided*, That this article shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising, and *Provided further*, That this article shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

SEC. 61. *Definitions.*—As used in this article—

The term "advertisement" includes any advertisement of distilled spirits through the medium of radio broadcast; or of newspapers, periodicals or other publications; or of any sign or outdoor adver-

tisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards—if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail; except that such term shall not include—

- (1) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under Article III of these regulations.
- (2) Any editorial or other reading matter in any periodical or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

SEC. 62. Mandatory statements.—(a) Responsible advertiser.—The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) Class and type.—The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) Alcoholic content.—

- (1) The alcoholic content by proof shall be stated for distilled spirits except as otherwise provided in paragraph (2) of this subsection.
- (2) The alcoholic content in percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Administrator from time to time.

(d) Percentage of neutral spirits and name of commodity.—

- (1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: “_____ % neutral spirits distilled from grain”; or “_____ % neutral spirits distilled from cane products”; or “_____ % neutral spirits distilled from fruit”; or “_____ % grain (cane products), (fruit), neutral spirits.”

- (2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit."

SEC. 63. *Lettering.*—Statements required under this article to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

SEC. 64. *Prohibited statements.*—(a) An advertisement of distilled spirits shall not contain—

- (1) Any statement that is false or misleading in any material particular.
- (2) Any statement that is disparaging of a competitor's products.
- (3) Any statement, design, device, or representation which is obscene or indecent.
- (4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer.
- (5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer. Nothing herein shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

(Blank to be filled in with name of the
permitted making guaranty.)

- (6) Any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, State or Federal authorization, law, or regulation; and if a municipal, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.
- (7) The words "Bond", "Bonded", "Bottled in Bond", "Aged in Bond", or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant

to Article III of these regulations, upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are required to appear upon the label.

(8) The word "pure" except as part of the bona fide name of a permittee or a retailer for whom the distilled spirits are bottled.

(9) The terms "double distilled", "triple distilled", or any similar terms.

(b) *Statements inconsistent with labeling.*—The advertisement shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.¹ This requirement shall become effective August 15, 1936.

(c) *Statements of age.*—The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of Article III of these regulations.

(d) *Curative and therapeutic effects.*—The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(e) *Place of origin.*—The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.*—Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of this article or are in any respect untrue.

(g) *Statements, seals, flags, coats of arms, crests, and other insignia.*—Statements, seals, flags, coats of arms, crests, and other insignia, or graphic, pictorial or emblematic representations thereof,

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, this sentence did not appear in these regulations.

likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of, the government, organization, family, or individual with whom such seal, flag, coat of arms, crest or other insignia is associated, are prohibited in any advertisement.

ARTICLE VII. STANDARDS OF FILL FOR BOTTLED DISTILLED SPIRITS

SEC. 70. *Application of this article.*—No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with this Article. Distilled spirits domestically bottled prior to January 1, 1935, and imported distilled spirits entered in customs bond in bottles prior to March 1, 1935, shall be regarded as being in conformity with this Article (1) if the bottle, or the label on the bottle, contains a conspicuous statement of the net contents thereof, and (2) if the actual capacity of the bottle is not substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

SEC. 71. *Misbranding.*—(a) Distilled spirits shall be deemed to be misbranded—

- (1) If the bottle is not a standard liquor bottle as prescribed by Section 72 for such distilled spirits.
- (2) If the amount of the distilled spirits contained in the bottle does not conform to one of the standards of fill in effect therefor under Section 73.
- (3) If the bottle is in an individual carton or other container, and the carton or other container is so made or formed as to mislead purchasers as to the size of the bottle.

SEC. 72. *Standard liquor bottles.*—(a) *General.*—A standard liquor bottle shall be one so made, formed and filled as not to mislead the purchaser.

(b) *Size.*—A liquor bottle shall be held to be so filled as to mislead the purchaser if the bottle holds distilled spirits in an amount other than one of the standards of fill in effect therefor under Section 73.

(c) *Headspace.*—A liquor bottle of a capacity of one-half pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of eight per centum of the total capacity of the bottle after closure.

(d) *Design.*—A liquor bottle shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser, if its actual capacity is substan-

tially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

Sec. 73. Standards of fill.—(a) The standards of fill for distilled spirits in liquor bottles shall be the following, subject to the tolerances hereinafter allowed:

(1) For all distilled spirits, whether domestically manufactured, domestically bottled, or imported:

1 gallon.	1 quart.	1 pint.	$\frac{1}{8}$ pint.
$\frac{1}{2}$ gallon.	$\frac{1}{5}$ quart.	$\frac{1}{2}$ pint.	$\frac{1}{16}$ pint.

(2) In addition, for brandy, whether domestically manufactured, domestically bottled, or imported:

$\frac{1}{8}$ pint.

(3) In addition, for Scotch and Irish whiskey and Scotch and Irish type whiskey; and for brandy and rum:

$\frac{1}{5}$ pint.

(b) The following tolerances shall be allowed:

(1) Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due exclusively to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles so as to be of uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

Sec. 74. Vintage spirits.—This Article shall not apply to—

(1) Distilled spirits imported as vintage spirits under permit issued by a District Supervisor of the Alcohol Tax Unit of the Bureau of Internal Revenue pursuant to Regulations 13 (Liquor Bottle Regulations) issued by the Secretary of the Treasury.

(2) Cordials and liqueurs, and cocktails, highballs, gin fizzes, bitters, and such other specialties as are specified from time to time by the Administrator.

ARTICLE VIII. GENERAL PROVISIONS

SEC. 80. *Exports.*—These regulations shall not apply to distilled spirits exported in bond.

SEC. 81. *Applicability of other regulations.*—Nothing contained in these regulations shall be construed as, in any manner, relieving any person from conforming with the requirements of the regulations of the Secretary of the Treasury issued pursuant to provisions of joint resolution approved June 18, 1934, entitled "Joint Resolution to Protect the Revenue by Regulation of the Traffic in Containers of Distilled Spirits."

SEC. 82. *Effective dates.*—Articles I, II, and VI of these regulations, except as otherwise provided, are effective on and after May 1, 1936. All other articles of these regulations, except as otherwise provided, are effective on and after August 15, 1936.¹

(Signed) JOSEPHINE ROCHE,

Acting Administrator,

Federal Alcohol Administration.

Approved Jan. 18, 1936.

(Signed) H. MORGENTHAU, JR.

Secretary of the Treasury.

¹As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, this section read as follows: "Except as otherwise provided herein, these regulations are effective on and after the first day of March 1936."

business bearing can be used and to provide for such other forms of identification as may be necessary to indicate the source of the product. It is further recommended that the Administrator be authorized to require that the name of the manufacturer or producer shall be printed on the label so that it is visible on one side of the label and that such name be prominently and in such size and style of lettering as will be deemed most suitable to enable the consumer most easily to read. APPENDIX A

**PERTINENT SECTION OF FEDERAL ALCOHOL ADMINISTRATION ACT RELATING TO
LABELING OF DISTILLED SPIRITS (SEC. 5 (e), FEDERAL ALCOHOL ADMINIS-
TRATION ACT)**

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

* Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: * * *

(e) *Labeling.*—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,*

That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice),¹ bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or *

¹ As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice)."

The Administrator shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

APPENDIX B

PERTINENT SECTION OF FEDERAL ALCOHOL ADMINISTRATION ACT RELATING TO ADVERTISING OF DISTILLED SPIRITS (SEC. 5 (f), FEDERAL ALCOHOL ADMINISTRATION ACT)

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate: * * *

(f) *Advertising.*—To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate. * * *

The Administrator shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

APPENDIX C

PERTINENT SECTIONS OF FEDERAL ALCOHOL ADMINISTRATION ACT RELATING TO PENALTIES FOR VIOLATIONS INVOLVING THE LABELING AND ADVERTISING OF DISTILLED SPIRITS

1. Civil penalties, \$1,000 (sec. 7, Federal Alcohol Administration Act):

PENALTIES

SEC. 7. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, or the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than \$1,000 for each offense. Subject to the approval of the Attorney General, the Administrator is authorized, with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of \$500 for each offense, to be collected by the Administrator and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

2. Suspension or revocation of permit (sec. 4 (d) and 4 (e), Federal Alcohol Administration Act):

PERMITS

SEC. 4. * * * (d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

APPENDIX D

FORM OF, AND INSTRUCTIONS RELATING TO, "GOVERNMENT" LABEL^{*}

Pursuant to section 32 of Regulations 5, Relating to the Labeling and Advertising of Distilled Spirits, the following form of "Government" label is hereby prescribed for all classes and types of distilled spirits.

CLASS AND TYPE

- (1) Alcoholic content.
- (2) Net contents.
- (3) Percentage of neutral spirits and name of commodity from which distilled.
- (4) Age statement.
- (5) Artificial or excessive coloring or flavoring.
- (6) State of distillation.

If all of the mandatory information required by section 32 (c) of Regulations 5 appears on the brand label, in the manner and form prescribed by the regulations, no separate "Government" label need be used. The "Government" label, however, if used, shall be prepared in the manner and form above prescribed. If any of the prescribed statements, as itemized above, are not applicable to the particular product to which the label is to be affixed (such as "Artificial or excessive coloring or flavoring"), or if any such statement is not authorized by the Regulations to appear upon the label of any particular product, all reference thereto shall be omitted. In the event that any such statement is omitted, however, all other statements, applicable to the particular product, shall appear in the form above prescribed, and in the order enumerated.

The words "Government label" or "Federal Alcohol Administration label" or similar words shall not be printed or otherwise stated on any label for distilled spirits. The label herein prescribed shall contain only the mandatory information above enumerated, and no other printed or graphic matter shall appear thereon. However, if the bottler desires to use a back label containing printed or graphic matter which does not conflict with the Regulations, the mandatory label information may be stated on such label, if it is stated in the manner and form herein prescribed and is separated by a heavy line or a wide space from all other matter appearing on such label.

PART II

MANNER OF STATING MANDATORY INFORMATION

The mandatory information required to appear upon the "Government" label shall be stated in the following manner:

(1) *Alcoholic content.*—

Except in the case of cordials and liqueurs, alcoholic content shall be stated in degrees of proof, as follows: "----- proof."

In the case of cordials and liqueurs, alcoholic content may be stated by degrees of proof or percentage of volume, as follows: "----- proof" or "----- % Alcohol by Volume."

(2) *Net contents.*—

The net contents, unless blown in the bottle, shall be stated as follows:

If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

If less than a pint, the net contents shall be stated in fractions of a pint; as for example "½ pint."

If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart, as for example "¼ quart."

If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon, as for example "½ gallon."

All fractions shall be expressed in their lowest denomination. If blown in the bottle, net contents need not be stated.

(3) *Percentage of neutral spirits and name of commodity from which distilled.*—

In the case of neutral spirits, only the name of the commodity from which distilled need be stated. Such statement shall be as follows:

Distilled from (grain)	or (grain) neutral spirits (alcohol)
(cane products)	(cane products)
(fruit)	(fruit)

In the case of gin produced by a process of continuous distillation, only the name of the commodity from which distilled need be stated. Such statement shall be as follows:

Distilled from (grain)
(cane products)
(fruit)

In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits are used therein, the percentage of such neutral spirits and the name of the commodity from which distilled shall be stated as follows:

----- % neutral spirits distilled from (grain) (cane products)
(fruit) or ----- % (grain) (cane products) (fruit) neutral spirits.

In the case of blended whiskey or spirit whiskey, as defined in the standards of identity, Regulations 5, the above statement shall appear in immediate conjunction with the required age statement.

(4) *Age statements.*—

(a) In the case of neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, bitters, and specialties, age statements are prohibited.

(b) In the case of rum, brandy, cognac, Scotch whiskey, Irish whiskey, Canadian whiskey, and American bottled in bond whiskey, age statements are optional. When such statements are used, they shall appear in the precise form prescribed in section 39 of Regulations 5.

(e) In the case of all classes and types of domestic whiskey, except bottled in bond whiskey, and in the case of all American type whiskey produced abroad, statements of age and percentage are required. In such cases the statements of age and percentage shall be in the precise form prescribed by section 39 of Regulations 5.

(d)¹ Regulations 5 define the term "age" to mean "the period during which, after distillation and before bottling, distilled spirits have been kept in oak containers, charred if for a whiskey of American type other than corn whiskey, straight corn whiskey, blended corn whiskey, or a blend of straight corn whiskeys. In the case of American type whiskeys produced on or after July 1, 1936, other than corn whiskey, straight corn whiskey, blended corn whiskey, and blends of straight corn whiskey, "age" means the period during which the whiskey has been kept in charred new oak containers."

(5) *Artificial or excessive coloring or flavoring.*—

(a) The presence of beading oil in any type of whiskey shall be stated as follows: "Contains beading oil."

(b) In the case of all distilled spirits containing some, but not more than $2\frac{1}{2}$ percent of synthetic or imitation coloring material, the presence thereof must be stated as follows: "Artificially colored"; *Provided*, That in the case of any type of whiskey (not including straight whiskey), brandy, or rum, the above statement is not required by reason of the use of caramel for coloring purposes.

(c) In the case of distilled spirits other than cordials, liqueurs, gin, gin fizzes, highballs and bitters, if the aggregate amount of coloring, blending, smoothing, or flavoring materials present is in excess of $2\frac{1}{2}$ percent by volume, the name and amount in percentage by volume of each of such materials shall be stated as follows:

"Contains _____% _____ (coloring) material."
—
(blending)
(smoothing)
(flavoring)

(6) *State of distillation.*—

In the case of domestic whiskey and straight whiskey, if the product is not distilled in the State given in the address on the brand label, the State of distillation shall appear as follows: "Distilled in _____ (the blank shall be filled in with the name of the State in which the whiskey is distilled)."

¹Amended July 8, 1936.

PART III

SAMPLE GOVERNMENT LABEL FORMS

For the information and guidance of all concerned, the following are sample forms of "Government" labels for the various classes and types of distilled spirits as defined in Regulations 5:

(1) *Alcohol (neutral spirits).*—

(Class 1, Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

ALCOHOL
193 proof
1 gallon
Distilled from grain

(2) *Whiskey, rye whiskey, bourbon whiskey, corn whiskey, wheat whiskey, malt whiskey, rye malt whiskey.*—

(Class 2 (a), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 4 of the above-prescribed "Government" label form are required to be stated. Statements 5 and 6 must appear if applicable.

Sample form

RYE WHISKEY
93 proof
1 pint
This whiskey is 9 months old
Contains beading oil
Contains 3% sherry blending material
Distilled in Maryland

(3) *Straight whiskey, straight rye whiskey, straight bourbon whiskey, straight corn whiskey, straight wheat whiskey, straight malt whiskey, straight rye malt whiskey.*

(Class 2 (b), (c), (d), (e), and (f), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 4 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable.

Sample form

STRAIGHT BOURBON WHISKEY
100 proof
1 pint
This whiskey is 2 years and 6 months old
Distilled in Pennsylvania

(4) *Blended whiskey (whiskey—a blend), blended rye whiskey (rye whiskey—a blend), blended bourbon whiskey (bourbon whiskey—a blend), blended corn whiskey (corn whiskey—a blend), blended wheat whiskey (wheat whiskey—a blend), blended malt whiskey (malt whiskey—a blend) or blended rye malt whiskey (rye malt whiskey—a blend).*

(Class 2 (g) and (h), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statements 4 and 5 must appear if applicable.

Sample form

BLENDED RYE WHISKEY
90 proof
1 quart
The straight whiskey in this product is 2 years old, 51% straight whiskey, 40% grain neutral spirits
Contains beading oil

(5) A blend of straight whiskies (blended straight whiskies), a blend of straight rye whiskies (blended straight rye whiskies), a blend of straight bourbon whiskies (blended straight bourbon whiskies), a blend of straight corn whiskies (blended straight corn whiskies), a blend of straight wheat whiskies (blended straight wheat whiskies), a blend of straight malt whiskies (blended straight malt whiskies) and a blend of straight rye malt whiskies (blended straight rye malt whiskies).—

(Class 2 (1), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 4 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

BLENDED STRAIGHT CORN WHISKIES

95 proof

4/5 quart

The straight whiskies in this product
are 3 years or more old

Contains 3% sherry blending material

(6) *Spirit whiskey*.—

(Class 2 (j), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, 3, and 4 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

SPIRIT WHISKEY

80 proof

1 pint

The whiskey in this product is 4
months old; 10% whiskey, and 90%
cane products neutral spirits

Contains beading oil

(7) *Scotch whiskey, blended Scotch Whiskey (Scotch whiskey—a blend).*—

(Class 2 (k), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

SCOTCH WHISKEY—A BLEND
86.8 proof
4/5 quart
Contains 3½% brandy blending material

(8) *Irish whiskey, blended Irish whiskey (Irish whiskey—a blend).*—

(Class 2 (1), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

BLENDED IRISH WHISKEY
90 proof
½ quart
This whiskey is 8 years old
Contains beadng oil

(9) *Canadian whiskey, blended Canadian whiskey (Canadian whiskey—a blend).*—

(Class 2 (m), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statements 3 and 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

BLENDED CANADIAN WHISKEY

90 proof

1 pint

8% grain neutral spirits

(10) *Blended Scotch type whiskey (Scotch type whiskey—a blend), (American blended Scotch whiskey), (American Scotch whiskey—a blend).*—

(Class 2 (n), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 4 is required to be stated if any of the malt whiskey or other whiskey used is less than 3 years old. If all of the whiskeys in the product are over 3 years old, statement 4 may, but need not, appear. Statement 5 must appear if applicable.

Sample form

BLENDED SCOTCH TYPE WHISKEY

86.8 proof

4/5 quart

The malt whiskey in this product is 3 years old; 50% malt whiskey, 50% other whiskey 9 months old

(11) *Blended Irish type whiskey* (*Irish type whiskey—a blend*), (*American blended Irish whiskey*), (*American Irish whiskey—a blend*).—

(Class 2 (o), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 4 is required to be stated if any of the malt whiskey or other whiskey used is less than 3 years old. If all of the whiskeys in the product are over 3 years old, statement 4 may, but need not, appear. Statement 5 must appear if applicable.

Sample form

BLENDED IRISH TYPE WHISKEY
90 proof
4/5 quart
The malt whiskey in this product is 4 years old; 50% malt whiskey, 50% other whiskey 10 months old

(12) *Distilled gin, compound gin*.—

NOTE.—This form to be used for "Dry gin," "London dry gin," "Hollands gin," "Geneva gin," "Old Tom gin," "Tom gin," and "Buchu gin," further designated as "Distilled" or "Compound," as the case may be.

(Class 3, Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 3, of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

DISTILLED DRY GIN
90 proof
1 pt.
100% cane products neutral spirits

(13) *Brandy (Grape brandy), Peach brandy, Apricot brandy, Raisin brandy, Apple brandy (Applejack), Cherry brandy, Orange brandy,* _____
 (other fruit)
brandy, Cognac (Cognac brandy), Dried Peach brandy, Dried Apricot brandy, Dried Apple brandy, Dried Cherry brandy, Dried Orange brandy, and Dried
brandy. _____

(other fruit)

NOTE.—Other appropriate term may be used in place of word "Dried."

(Class 4, Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

GRAPE BRANDY
90 proof
1 pint
Artificially colored

(14) *Rum, New England rum, Puerto Rico rum, Cuba rum, Demarara rum, Barbados rum, St. Croix rum, St. Thomas rum, Virgin Islands rum, Jamaica rum, Martinique rum, Trinidad rum, Haiti rum, San Domingo rum.* _____

(Class 5, Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

RUM
90 proof
1 pint

(15) *Cordial* }
 (Type designation) *Liqueur* }, Sloe gin

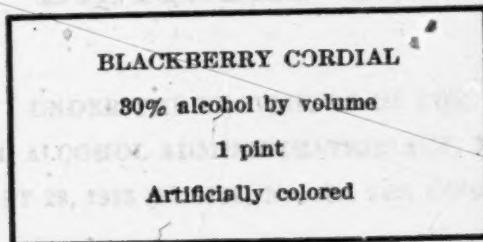
NOTE.—Name of cordial may be preceded by word "Dry" if added sugar and dextrose are less than 10% by weight in the finished product.

Words "Cordial" or "Liqueur" need not be stated to indicate the class of distilled spirits which in fact are cordials or liqueurs, unless the Administrator finds that without a designation of class, the type designation is one which does not clearly indicate to the consumer that the product is a cordial or liqueur.

(Class 6 (a), (b), and (d), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form



PART IV

CERTIFICATES OF LABEL APPROVAL

Articles IV and V of Regulations 5 require that applications for "Certificates of label approval" be filed covering all labels affixed to domestically bottled distilled spirits, and distilled spirits imported in bottles. However, except as provided below, no applications for "Certificates of label approval" need be filed covering "Government" labels:

(1) All labels on distilled spirits imported in bottles, including "Government" labels, must be submitted for approval.

(2) All labels for domestically bottled highballs, cocktails, gin fizzes, specialty products, imitation products, and products covering which no standard of identity is prescribed in Regulations 5, including "Government" labels on such products, must be submitted for approval.

(3) If the "Government" label on domestically bottled distilled spirits is superimposed upon another label bearing other printed or graphic matter, such label must be submitted for approval.

W. S. ALEXANDER,
Administrator, Federal Alcohol Administration.



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TREASURY DEPARTMENT
FEDERAL ALCOHOL ADMINISTRATION

REGULATIONS No. 3

RELATING TO

BULK SALES AND BOTTLING
OF DISTILLED SPIRITS

UNDER THE PROVISIONS OF THE
FEDERAL ALCOHOL ADMINISTRATION ACT, APPROVED
AUGUST 29, 1935 (PUBLIC, No. 401, 74th CONGRESS)

DECEMBER 1935



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

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**REGULATIONS NO. 3.—RELATING TO BULK SALES AND
BOTTLING OF DISTILLED SPIRITS**

SECTION 1. Sales of distilled spirits in bulk.—(a) It is unlawful for any person to sell, offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk, for nonindustrial use, except for export or to the classes of persons enumerated in section 2 hereof.

(b) It is unlawful for any person to import distilled spirits in bulk, for nonindustrial use, except for sale to or for use by the classes of persons enumerated in section 2 hereof.

(c) As used in these regulations the term "in bulk" means in containers having a capacity in excess of 1 wine gallon.

Sec. 2. Acquiring or receiving distilled spirits in bulk.—(a) Persons holding warehousing and bottling permits may, pursuant to such permits, acquire or receive in bulk, and warehouse and bottle, distilled spirits as follows:

(1) If the permittee is a distiller or other person operating an internal-revenue bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle in his bonded premises domestic un-tax-paid distilled spirits, so far as permitted by the internal-revenue laws. He may also acquire or receive in bulk, and warehouse and bottle, in his tax-paid warehouse, tax-paid domestic and imported distilled spirits.

(2) If the permittee is a rectifier, he may acquire or receive in bulk, and warehouse and bottle, tax-paid domestic and imported distilled spirits.

(3) If the permittee operates a class 8 customs-bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle, imported distilled spirits, so far as permitted by the customs laws.

(b) Persons holding permits as rectifiers of distilled spirits, or as producers and blenders of wine, may, pursuant to such permits, acquire, or receive distilled spirits in bulk for the following uses:

(1) A rectifier may acquire or receive in bulk tax-paid imported or domestic distilled spirits for use in rectifying and blending.

(2) A winemaker may acquire or receive in bulk alcohol or brandy for the fortification of wines.

(c) Any agency of the United States, or of any State or political subdivision thereof, may acquire or receive in bulk, and warehouse and bottle, imported and domestic distilled spirits in conformity with the internal-revenue laws.

SEC. 3. *Warehouse receipts.*—(a) By the terms of the Federal Alcohol Administration Act, all warehouse receipts for distilled spirits in bulk issued on and after August 29, 1935, must require that the warehouseman shall—

(1) Package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or

(2) Deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(b) Warehouse receipts for distilled spirits, in bulk, issued prior to August 29, 1935, may not be transferred unless they contain one or both of the conditions enumerated in paragraph (a) above, but any warehouse receipt for distilled spirits in bulk issued prior to August 29, 1935, which does not contain either of the above conditions, may be exchanged for a receipt conforming to the act.

(c) The provisions of the Federal Alcohol Administration Act, which forbid any person to sell, offer to sell, contract to sell or otherwise dispose of warehouse receipts for distilled spirits in bulk, do not apply to warehouse receipts for bottled distilled spirits.

SEC. 4. *Sales by permittees of distilled spirits for industrial use.*—Distillers, rectifiers, and other permittees engaged in the sale or other disposition of distilled spirits for nonindustrial use shall not sell or otherwise dispose of distilled spirits in bulk (other than alcohol) for industrial use, unless such distilled spirits are shipped or delivered directly to the industrial user thereof.

(Signed) FRANKLIN C. HOYT,

Administrator, Federal Alcohol Administration.

Approved December 20, 1935.

(Signed) H. MORGENTHAU, JR.

Secretary of the Treasury.

The transmission to the Circuit Court of Appeals of Plaintiff's original Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", will be requested.

EXHIBIT AK FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:

That according to the records of this Department, there appears an importation of distilled spirits made by F. Carrera & Hno., of San Juan, Puerto Rico, on May 3, 1934, on which taxes were paid amounting to \$208-80, declared in invoice No. 31230. The labels affixed to the containers of said distilled spirits show the following:—

Ron Dominicano
Carta Blanca
Brugal & Ca.
Puerto Plata
Republic Dominicana
Medallas de Oro Brugal Medallas de Oro".

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the City of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred and thirty-eight.

R. SANCHO BONET
Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AL FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:

That according to the records of this Department, Compania Ron Brugal, S. A. has filed with this Department the labels described hereinbelow and appearing on the reversed side hereof, as being or having been used on the alcoholic beverages manufactured by said Compania Ron Brugal, S. A., in Puerto Rico;

"Ron Brugal—Red Label"

"Brugal—Brugal Rum Superior" (Gold Label and White Label)

"Ron Cabellito"

"Ron Trafico"

"Rum Brugal Superior"—Cuban Type"

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred thirty-eight.

R. SANCHO BONET

Treasurer of Puerto Rico

[Internal Revenue Stamps for \$1-50 cancelled]

EXHIBIT AM FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify;—

That according to the records of this Department, National Liquor Company, Inc., of Hato Rey, Rio Piedras, Puerto Rico, has filed with this Department the labels described hereinbelow and appearing on the reverse side hereof, as being or having been used on the alcoholic beverages manufactured by said National Liquor Company, Inc.:

"Daiquiri Coctelera Rum—Cordon De Oro—Golden Cord

Product of Puerto Rico Trade Mark Registered
 Comp. Ron Daiquiri—S. A.”
 “Nacional—Aguardiente Seco Destilado”
 “Ron Aereoplano—Puerto Rican Rum”
 Ron Carta Oro Puerto Rico
 “Ron Nacional Superior—Puerto Rican Rum”
 “El Abuelo—Ron de Puerto Rico”
 “Ron Campeon De Puerto Rico”
 “Ron Rey—Distilled Puerto Rican Rum—The King of
 Rums—Gold Label”.

In testimony whereof, and upon order of the District Court
 of the United States for the District of Puerto Rico, San Juan,
 Puerto Rico, I do hereby set my hand and the official seal of the
 Department of Finance, in the city of San Juan, Puerto Rico, on
 this the eighteenth day of January of the year nineteen hundred
 thirty-eight.

R. SANCHO BONET
 Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AN FOR PLAINTIFF.

Department of Finance
 The People of Puerto Rico
 Bureau of Alcoholic Beverages and Narcotics

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby
 certify:—

That according to the records of this Department, the following
 persons and entities appear as licensed manufacturers of distilled
 spirits or alcoholic beverages, on or before February 1, 1936:

Distillers

Puerto Rico Distilling Co.	Arecibo
Sucn. J. Serralles (now Destileria Ser- ralles, Inc.)	Ponce
Brugal & Co. C. por A.	San Juan

West Indies Rum Distilleries, Inc.	Ponce
Rafael del Valle Pijem	Santurce
Roberto Castellon	Caguas
Jose del Rio	Morovis
Luis A. Girona	Caguas
Rectifiers	
Sucn. J. Serralles (now Destileria Serralles, Inc.)	Ponce
I. Torruella & Co.	Ponce
Pedro R. Grau	Mayaguez
Primitivo Grau	Mayaguez
Manuel Marin & Co. (now Licoreria Marin, Inc.)	Mayaguez
The Gioconda, Inc.	San German
J. R. Nieves & Co.	Arroyo
Puerto Rico Distilling Co.	Arecibo
Barcelo & Co.	Arecibo
R. G. Lago & Co.	Arecibo
J. M. Portela & Co.	Arecibo
Roses & Co.	Arecibo
J. Gonzalez Clemente & Co. (now J. Gonzalez Clemente)	Mayaguez
L. Isern & Co.	Caguas
Vigo Isern & Co.	Caguas
Cia. Ron La Vida, Inc.	Santurce
Salvador Bow	Santurce
Vicente Tellado, Sucrs.	Santurce
R. Rios Alvarez	Santurce
Eduardo R. Gonzalez	San Juan
R. Vega e Hijos	San Juan
Sucs. de Jose Fernandez	San Juan
Nicolas Figuerola	Caguas
Francisco N. Selles	San Lorenzo
M. Davila & Co.	Santurce
Edmundo B. Fernandez	Bayamon

Mateo M. Pascual	Rio Piedras
National Liquor Co., Inc.	Rio Piedras
Brugal & Co., C. por A	San Juan
F. Arce Almirotty	Ponce
Licoreria Gatell	Santurce
Antonio Yumet	Ponce
Roberto Castellon	Caguas
West Indies Rum Distilleries, Inc.	Ponce
Monllor & Boscio, Sucs. S. en C.	Ponce
Ramon C. Julia (now Cia Licoreria Julia)	Santurce
J. Moises Colon (Colon Hnos. & Co.)	Comerio

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred thirty-eight.

R. SANCHO BONET,
Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1.50 Cancelled.]

EXHIBIT AO FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:—

That according to the records of this Department, the following persons and entities appear as Licensed manufacturers of distilled spirits or alcoholic beverages, after February 1, 1936:—

Distillers

Barcelo, Marques & Co., S. en C.	Camuy
Cia Ron Carioca Destileria, Inc.	Camuy
National Liquor Co., Inc.	Jayuya
Colon Hermanos & Cia	Comerio
Bacardi Corporation of America	Santurce

Rectifiers

A. Vega Toro	Mayaguez
Julio Maldonado	Mayaguez
Cia. Ron Carioca Destileria, Inc.	San Juan
Compania Puertorriquena de Ron	Santurce
Ordonez Hermanos	Santurce
Ubides & Co.	Ponce
Bacardi Corporation of America	San Juan

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January, of the year nineteen hundred and thirty-eight.

R. SANCHO BONET,
Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AP FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:—

That according to the records of this Department, Compania Ron Carioca Destileria, Inc., of San Juan, Puerto Rico, was duly licensed by the Department of Finance to manufacture alcoholic beverages on December 18, 1936, and that said Compania Ron Carioca, Destileria, Inc. has filed with this Department the labels described hereinbelow and appearing on the reverse side hereof, as being or having been used on the alcoholic beverages manufactured in Puerto Rico.

"Rum Carioca—Planters Heavy Bodied"

"Rum Carioca—Carta Blanca"

"Rum Carioca—Gold Label"

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred thirty-eight.

R. SANCHO BONET,
Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AQ FOR PLAINTIFF.

Law Office Garcia Vidal

[Four five cents stamps cancelled.]

Lacret Baja 3 Phone Number 2059 Santiago Cuba

Manuel Garcia Vidal Esq.—Secretary of the Commercial and Industrial stock company domiciled in this City, known as "Compania Ron Bacardi, S. A.".

Certify:—That at a meeting of the Board of Directors of this Company, held on February 25, 1923 at which were present seven of the eight directors who compose the said Board of Directors, Enrique Schueg y Chassin was unanimously elected Managing Director of this company, of which office he took possession; that it was further unanimously voted at said meeting to delegate the powers vested in the Board of Directors of this Company into said Enrique Schueg y Chassin, Managing Director among other; to exercise them together with another or separately that he has the representation of the Company; that there were conferred on him each and every one of the powers given to the Board of Directors, by Article XXXVIII of the Articles of this Company. That this resolution is in force and Mr. Schueg continues in possession of his office as Managing Director of the Company on this day.

I further certify that Article XXXVIII of the Articles of Compania Ron Bacardi, S. A., literally reads as follows:—

Article XXXVIII—The Board of Director shall have the

fullest powers for the direction, management and conduct of the company's business, without further limitations than those provided by law or by these Articles; and accordingly shall represent the Company, in law suits and otherwise; they shall have full powers to effect any acts or contracts, whether judicial or extrajudicial; and shall therefore;

(a) Agree to and carry out any and all of the purposes for which the Compania Ron Bacardi S. A. was organized as appears from this deed.

(b) Exercise all the rights and actions of the company, in lawsuits and otherwise, before all authorities, courts, tribunals, offices and officers, as well as to grant powers and confer representation of the company on lawyers, solicitors, judicial mandataries or on any other persons, for the defense of the company's interests together with necessary powers.

(c) Enter into all kinds of contracts of purchase, sale, exchange, delivery and acquisition payment, of mortgage and of extension, modification, extension of time, subrogation, transfer and cancellation of mortgage, of pledge, of lease, whether recordable or not in the Registry of Property or anticresis; or transfer of rights and actions, whether they refer to real or personal property, actions or real rights or of other kinds, at the prices and with the agreements and conditions which it may deem convenient in each case; to give and take loans of money, with or without mortgage security, for the time, amount and conditions which may seem necessary; take back former assets; execute all kinds of contracts, even though not specified herein and even if they bind the company or its assets; execute all kinds of public or private documents and do anything else which may benefit the interests of the company.

(d) Decide all those matters of the company not especially provided for or whose solution is not expressly reserved to a general meeting of the stockholders.

I further certify that on June 8, 1934, on which date Enrique

Schueg y Chassin signed on behalf of Compania Ron Bacardi S. A., organized and existing under the laws of Cuba, an agreement with the Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania, United States of America, which is attached to this certificate, Mr. Schueg was the President and Managing Director of Compania Ron Bacardi S. A.; that on said date the delegation of powers conferred on him by the Board of Directors of this company was in force and also the powers delegated to him contained on Article XXXVIII of the Articles of this company, herein-before transcribed.

I further certify that at the meeting held by the Board of Directors yesterday August 3, 1937 at which were present six of the eight directors who form this body, it was unanimously voted to ratify in all its parts the contract entered into between Mr. Schueg, President and Managing Director of the Compania Ron Bacardi S. A. on behalf of the Company, and the Bacardi Corporation of America, on June 8, 1934, the latter being represented by its President Luis J. Bacardi and its Secretary, Mr. Nemesio Alvare, of which contract there is attached to this certificate an original English copy without a Spanish translation, which is a true and exact copy of the contract entered into on that date between the two companies above mentioned.

In witness whereof I sign these presents upon petition of the President of this company, Mr. Schueg, and affix twenty cents in stamps of the National Excise Tax visaed by the Second Vice-President, Mr. Pedro E. Lay y Lombard, acting as President, inasmuch as the President, Mr. Schueg is an interested party and the first Vice-President is absent in Santiago de Cuba, on August 4, 1937.

COMPANIA RON BACARDI, S. A.,
Manuel Garcia Vidal, Secretary

[COMPANY'S SEAL]

The preceding document has been found to be correct.

Compania Ron Bacardi, S. A.,

Pedro E. Lay, President P. S.

[COMPANY'S SEAL]

I, Doctor Hernando De Hechavarria y De La Pezuela, Lawyer and Notary Public, residing in this capital of Province, certify: that the preceding signatures are genuine, they having been affixed in this proceeding in my presence by Messrs. Pedro E. Lay y Lombard and Lic. Manuel Garcia Vidal, in their respective capacities of Vice-President, acting as President and Secretary of Compañia Ron Bacardi, S. A., which gentlemen I personally know; the second one authorizing the certification of certain parts copies from the Minute Books of the general meetings and of the Board of Directors of said company and the first one viseing the signature of the second. Santiago de Cuba, on the fourth of August, nineteen hundred and thirty-seven.

Dr. B. HECHAVARRIA

[NOTARIAL SEAL]

Certified to be a true and correct translation.

Frank L. Cole,

Official Translator,

U. S. Dist. Court for P. R.

I, attorney Manuel Garcia Vidal, Secretary of Compania Ron Bacardi S. A., domiciled in this city:—

Certify: That the foregoing is a literal copy of the English original contract, which was notified to the Board of Directors of this Company yesterday, August three, nineteen hundred thirty-seven, and all and each part thereof has been unanimously ratified by the Board, of six of the eight directors who compose same, attending. In witness whereof I sign these presents in Santiago de Cuba, August 4, nineteen hundred Thirty-Seven, to which I affix twenty cents in stamps of the National Tax and visaed by Mr.

Pedro E. Lay y Lombard, Second Vice-President acting as President.

COMPANIA RON BACARDI, S. A.,
Lic. Manuel Garcia, Secretary,

[SEAL]

This document has been found to be correct.

Compania Ron Bacardi, S. A.,
Pedro E. Lay, President P. S.

[SEAL]

Certified to be a true and correct translation.

Frank L. Cole,
Official Translator,

United States District Court for Puerto Rico.

Here follows "License and agreement between Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba, and Bacardi Corporation of America of Philadelphia, Pennsylvania.

H. EDGAR BARNES, Attorney,
20th Floor Finance Bldg.,
1428 South Penn Square,
Philadelphia, Pa.

Which is not copied as it has already been furnished (Said agreement has been fully transcribed in Plaintiff Exhibit V).

Republic of Cuba, Province of Oriente,
Consulate of the United States of America

At Santiago de Cuba. ss:

I, Owen W. Gaines, Vice Consul of the United States of America in and for the consular district of Santiago de Cuba, in the Province of Oriente, Republic of Cuba, duly commissioned and qualified, do hereby certify that Dr. Bernardo Hechavarria, whose true signature and seal are, to the best of my knowledge and belief, respectively, subscribed and affixed to the foregoing instrument, was, in the 4th day of August, 1937, the day of the date

thereof, Notary Public at the city of Santiago de Cuba, Province of Oriente, Republic of Cuba, to whose official acts faith and credit are due.

For the contents of the annexed document the American Consulate at Santiago de Cuba, Cuba, can assume no responsibility.

In witness whereof I have hereunto set my hand and the seal of the Consulate at Santiago de Cuba, this 4th day of August, 1937.


OWEN W. GAINES,

Vice Consul of the United States of America.

[SEAL]

American Consulate.

Fee \$2-00 Service No. 525 Item No. 38

Cancelled Fee Stamp \$2-00.

EXHIBIT AR FOR PLAINTIFF.

Garcia Vidal Law Office

Lic. Manuel Garcia Vidal

Attorney Notary-Public

Lacret Baja 3 Phone Number 2059 Santiago de Cuba.

Dr. Humberto Garcia Carbonell, Attorney.

(Four five cents stamps cancelled)

I, attorney Manuel Garcia Vidal, Secretary of the commercial and industrial stock company, domiciled in this city, called "Compania Ron Bacardi S. A."

Certify: That on pages one hundred sixty-six to one hundred seventy-three, both inclusive, book third, of the minute book of the Board of Directors of this Company, there appears one which reads literally:

"Minutes Number One Hundred Sixty-Nine.—In the City of Santiago de Cuba, on the eighteenth of December nineteen hundred thirty-seven. In the meeting room of the Compania Ron Bacardi S. A., Aguilera Baja numbers twenty-eight, thirty and thirty-two, there met Messrs. Enrique Schueg y Chassin, President; Pedro E. Lay y Lombard, Second Vice-President; Alberto Acha

y Portes, First Member; Radames Covani y Puccinelli, Second Member; Frederico Bolivar y Estenger, Third Member; Jose Espin y Vivar Fourth Member, and Lic. Manuel Garcia Vidal, Secretary, as per previous notice. Mr. Schueg, President, opens the meeting, inasmuch as almost all of the members of the Board of Directors were present there being a quorum, and states: That on reporting to this Board of Directors at its meeting held on August 3 of this year, as per minutes number one hundred fifty-eight, he had the purpose to give together with his report an account of the additional contract to that of June eight nineteen hundred thirty-four the purpose of the said meeting, and through some inadvertence there was misplaced the document which contains this additional contract entered into by Mr. Schueg who is talking, on behalf of this company with the Bacardi Corporation of America, for which reason the matter was not discussed: That he comes to cure this omission; and therefore reports to the Board that he has entered into an additional agreement to modify some of the clauses of the agreement ratified at the meeting of August three last, to which he has referred; that the said contract in English is as follows:—

"Amendment to Agreement of June 8, 1934: Agreement made this 19th day of December, 1935, between Compania Ron Bacardi, S. A., a company organized and existing under the laws of the Republic of Cuba (hereinafter called Cuban Bacardi), and Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania, United States of America (hereinafter called American Bacardi) — Witnesseth: Whereas, the parties hereto entered into an agreement dated June 8, 1934 whereby Cuban Bacardi granted unto American Bacardi under certain terms and conditions, for certain territories therein described, certain licenses, franchises, rights and privileges connected with the use of the invention, formulae, manufacturing secrets and processes, trade-marks, trade-names, brands, labels and other devices, then owned or thereafter to be developed and Cuban Bacardi, and whereas, it now seems advisable and highly beneficial

to both parties that the territory described in said agreement of June 8, 1934, be increased and extended and that certain provisions of said agreement relating to the payment of royalties be amended and modified. Now, therefore, in consideration of the mutual benefits and promises, and other valuable considerations, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements herein contained, the parties agree that the said agreement of June 8, 1934 shall be and hereby is duly amended, changed and supplemented as follows:

(1) The second paragraph of Section Second of the said agreement, which described and outlines in detail all of the so called "granted territory" wherein the exclusive licenses, franchises, privileges and rights granted to American Bacardi are to apply, shall be amended, changed and supplemented to read: "All of continental United States of America, including Alaska, and the territories and possessions of the United States of America (excepting the Philippine Islands, and the Canal Zone) which territory is hereinafter for convenience called "the granted territory". (2) The schedule of dates and number of gallons recited in the first paragraph of Section Third of the said agreement, which govern the amount of royalties that are to be paid as provided in Section Sixth of the said agreement, shall be amended, changed and supplemented to read: "From June 1, 1934 to December 31, 1938 no royalty shall be paid. From January 1, 1939 to December 31, 1939, upon 250,000 gallons. From January 1, 1940 to December 31, 1940 upon 300,000 gallons. From January 1, 1941 to December 31, 1941, upon 450,000 gallons. From January 1, 1942 to December 31, 1942, upon 550,000 gallons. From January 1, 1943 to December 31, 1944, upon 650,000 gallons. (3) The last sentence of Section Sixth of the said agreement, referring to the dates when the royalty or license fee is to be paid, shall be amended, changed and supplemented to read: "As hereinabove stated, the royalty or license fee is to be paid for each gallon of Bacardi products manufactured and sold by American Bacardi, but no royalty or license fee shall be paid to Cuban Bacardi for sales made during the period extending from June 1st, 1934 to

December 1st, 1938, nor upon sales made at any time for which American Bacardi has been unable to make collection and obtain payment after due and diligent effort on its part." In all other respects and particulars the said agreement of June 8, 1934 is hereby ratified, confirmed and approved in its entirety. It is specifically agreed that the approval and consent by either party to the amendments, changes and supplements herein contained shall not be construed by the other as such an act as will constitute a violation, breach, rescission and or cancellation of the said agreement of June 8, 1934, or as such an act as will require or obligate either party to make other and additional amendments, changes and supplements to the said agreement or as a waiver of any of their respective rights thereunder. In witness whereof, the parties thereto have respectfully caused their names to be written and their corporate seals to be hereunto affixed, duly attested by a proper officer, the day and year first above written,

COMPANIA RON BACARDI, S. A.,

By Henri Schueg, President.

BACARDI CORPORATION OF AMERICA,

by Jose M. Bosch,

Vice-President and Treasurer".

That said original contract in English translated into Spanish is as follows:—

"Enmienda al Convenio del 8 de junio de 1934". Convenio hecho este 19 de diciembre de 1935 entre la "Compania Ron Bacardi, S. A." una compania que se establecio y funciona de acuerdo con las leyes de la Republica de Cuba (que en lo adelante se llamara Bacardi Cubana) y la Bacardi Corporation of America, una corporacion que se establecio y funciona de acuerdo con las leyes del Estado de Pennsylvania, Estados Unidos de America (que en lo adelante se llamara la Bacardi Americana) Por cuantos: las partes al actual convenio suscribieron en fecha 8 de julio de 1934 un contrato mediante el cual la Bacardi Cubana otorgo a la Ba-

cardi Americana, bajo ciertas estipulaciones y condiciones y para determinados territorios descritos en dicho instrumento, determinadas licencias, franquicias, derechos y privilegios relacionados con el uso de invenciones, formulas, secretos industriales, procesos industriales, marcas de fabrica, nombres o marcas comerciales, marcas, etiquetas y otras creaciones o invenciones ya poseidas por la Bacardi Cubana o que en el futuro pudieran ser desarrollados por la dicha Bacardi Cubana, Y Por cuanto ahora parece aconsejable y de alta conveniente para ambas partes que el territorio descrito en el citado contrato del 8 de junio de 1934 sea ampliado y extendido y que determinadas disposiciones del supradicho convenio que se refieren al pago de regalías sean enmendadas y modificadas, Por tanto: en consideracion de beneficios y promesas mutuas; y de otras valiosas consideraciones, recibo de las cuales se consigna por medio de las presentes lineas, y en consideracion ademas de los arreglos y convenios contenidos en este documento, las partes convienen en que el citado contrato de fecha 8 de junio de 1934 sea como por las presentes lo es debidamente modificado, cambiado y supplementado en la forma siguiente:—(1) El segundo parrafo de la Seccion Segunda del dicho contrato, que describe y define en detalle todo el llamado "Territorio" concedido" dentro del cual las licencias, franquicias, privilegios y derechos otorgados a la Bacardi Americana son aplicables, quedara modificado, cambiado y supplementado de modo que rece textualmente: "Todos los Estados Unidos de America en su porcion continental, incluyendo Alaska, y los territorios y posesiones de los Estados Unidos de America (exceptuando las Islas Filipinas y la Zona del Canal) cuyo territorio se designara en lo adelante por razones de convenientia "el territorio otorgado". (2) La lista de fechas y el numero de galones estampados en el primer parrafo de la Tercera Seccion del citado contrato, que rigen el importe de las regalías que deben pagarse de acuerdo con la Sexta Seccion del expresado contrato, seran modificados, cambiados y supplementados de

modo que recen textualmente: "Desde junio 1, 1934 a diciembre 31, 1938, no se pagara regalia alguna. De enero 1, 1939 a diciembre 31, 1939, sobre 250,000 galones. De enero 1, 1940 a diciembre 31, 1940, sobre 300,000 galones. De enero 1, 1941 a diciembre 31, 1941, sobre 450,000 galones. De enero 1, 1942 a diciembre 31, 1942, sobre 550,000 galones. De enero 1, 1943 a diciembre 31, 1944, sobre 650,000 galones. (3) La ultima oracion de la Seccion Sexta del referido contrato, que se refiere a las fechas en las cuales debe pagar el importe de las regalias, sera modificada, cambiada y suplementada de modo que rece textualmente: "Como se expresa mas arriba, la regalia o derecho de licencia ha de pagarse por cada galon de productos Bacardi elaborado y vendido por la Bacardi Americana, pero no se pagara ninguna regalia o derecho de licencia alguno a la Bacardi Cubana por las ventas realizadas durante el periodo que se extiende desde el 1 de junio de 1934 hasta el 1 de diciembre de 1938, ni por ventas, realizadas en cualquier periodo y sobre las cuales la Bacardi Americana no haya podido obtener el correspondiente pago, despues de realizar los esfuerzos debidos y diligentes para obtenerlo." En todos los demas respectos y particulares el expresado contrato del 8 de junio de 1934 se confirma, ratifica y aprueba en su totalidad por medio del presente instrumento. Se conviene especificamente que la aprobacion y el consentimiento por cualquiera de las dos partes a las modificaciones, los cambios y las suplementaciones contenidas en el presente instrumento no podran ser interpretados por la otra como una violacion, contravencion, rescision o cancelacion del citado contrato del 8 de junio de 1934, ni tampoco en sentido de que obligue a cualquiera de las dos partes a efectuar modificaciones, cambios y suplementaciones adicionales al dicho contrato, o como renuncia de cualquiera de sus respectivos derechos dentro del mismo. En testimonio de lo cual, las partes han hecho suscribir sus respectivos nombres y fijar sus sellos corporativos, respetuo-

samente, firmas y sellos autenticados por sus funcionarios autorizados, el dia y ano mas arriba mencionados.

COMPANIA RON BACARDI S. A.,

pp Henri Schueg, Presidente.

BACARDI CORPORATION OF AMERICA,

pp. Jose M. Bosch,

Vice-Presidente y Tesorero."

This matter being amply discussed after the additional contract herein transcribed was read it was unanimously ratified in each and every one of its parts the additional contract just copied and which is known as "Amendment to the Contract of June 8, 1934" which with this one form one sole document.

I further certify: that Messrs. Enrique Schueg y Chassin, Pedro E. Lay y Lombard, y Alberto Acha y Portes and myself, Lic. Manuel Garcia Vidal, were elected by secret ballot, the first one, President; the second, Second-Vice-President; the third, First Member and I, Secretary, for a term to expire on March 15 nineteen hundred and thirty-eight, at a general meeting of stockholders of this company held on the twenty-eighth of February nineteen hundred thirty-six, at which were present persons representing twenty-thousand eight hundred sixty-nine shares; that Messrs. Radames Covani y Puccinelli, Federico Bolivar y Estenger y Jose Espin y Vivar were unanimously elected by secret ballot, the first, Second Member; the second, Third Member, and the third, Fourth Member of this company for a term which will expire the fifteenth of March, nineteen hundred thirty-nine, at the General Meeting of Stockholders held on the fifteenth of March nineteen hundred thirty-seven at which were present in person or by proxy, owners of thirty-one thousand seventy-eight shares, the capital stock being composed at both general meetings of thirty-five thousand shares; that all the members of the Board of Directors herein named, took possession of their respective positions and are at present occupying them.

The foregoing agrees with the original Minute Books of the

General Meetings of Stockholders and of the Board of Directors of this company, which I certify; and under my responsibility I declare that the items contained in this certificate are true, and the resolutions passed and herein certified are still in effect that Mr. Enrique Schueg y Chassin, President, who visaes this certificate, and myself, Lic. Manuel Garcia Vidal, Secretary, are in possession of our respective positions.

In witness whereof I issue these presents visaed by the President, Mr. Schueg, to which I affix the seals of the National Excise Tax for the value of twenty cents, in Santiago de Cuba, December twenty, nineteen hundred thirty-seven.

COMPANIA RON BACARDI S. A.

Lic. Manuel Garcia, Secretary.

The preceding document has been found to be correct.

Compania Ron Bacardi S. A.,

Henri Schueg, President.

Doctor Bernardo De Hechavarria y de La Peziela, attorney and Notary Public with residence in this capital of Province.—I certify: That the preceding signatures are genuine, they having been affixed in this act, in my presence, by Messrs. Enrique Schueg y Chassin and Lic. Manuel Garcia Vidal, President and Secretary respectively of the Compania Ron Bacardi S. A. which gentlemen I personally know, the second authorizing the certificate of certain parts copied from the minute books of General Meetings and of the Board of Directors of said company, and the first one visaeing the signature of the second, Santiago de Cuba, December twenty, nineteen hundred thirty-seven.

[NOTARIAL SEAL]

B. HECHAVARRIA

Certified to be a true and correct translation.

Frank L. Cole,

Official translator,

United States District Court for Puerto Rico.

Republic of Cuba, Province of Oriente
Consulate of the United States of America

At Santiago de Cuba. ss:

I, Owen W. Gaines, Vice Consul of the United States of America in and for the consular district of Santiago de Cuba, in the Province of Oriente, Republic of Cuba, duly commissioned and qualified, do hereby certify that Dr. Bernardo de Hechavarria, whose true signature and official seal are, respectively, subscribed and affixed to the foregoing certificate, was, on the 20th of December, 1937, the day of the date thereof, Notary Public at the city of Santiago de Cuba, Province of Oriente, Republic of Cuba, to whose official acts faith and credit are due.

For the contents of the annexed document the American Consulate at Santiago de Cuba, Cuba, can assume no responsibility.

In witness whereof I have hereunto set my hand and the seal of the Consulate at Santiago de Cuba, Cuba, this 21st day of December, 1937.

HARRY W. STORY,

[SEAL] Vice Consul of the United States of America
American Consulate.

Cancelled Fee Stamp \$2-00.

Service No. 898 Item No. 38—Fee \$2-00

EXHIBIT AS FOR PLAINTIFF.

BACARDI CORPORATION OF AMERICA

Certified Copy of Resolutions of Board of Directors.

The undersigned, George W. Witney, duly deposes and states that he resides in Philadelphia, Pennsylvania, and that he is Secretary of Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania.

He further deposes and states that the resolution recited below was duly adopted by the Board of Directors of said corporation at a meeting duly held March 20, 1936 at which a quorum was present, and that the form herewith recited is a true and accurate

copy of said resolution as the same appears in the record of said meeting in the minute book of the said corporation, viz:

"Be it further resolved that the Amendment of December 19, 1935 to the Agreement of June 8, 1934 between this company and Compania Ron Bacardi, as presented at this meeting and as executed as of December 19, 1935 by Jose M. Bosch, Vice-President and Treasurer, be and the same hereby is duly ratified, confirmed and approved, and

"Be it further resolved that a copy of the said amendment be filed with the minutes of this meeting as a part thereof, and

"Be it further resolved that all contracts, agreements, leases, and arrangements of all kinds heretofore made by Jose M. Bosch, Vice-President and Treasurer of this company, in connection with the opening of a plant for the manufacture, sale and distribution of Bacardi products on the Island of Porto Rico, be and the same hereby is duly ratified, confirmed and approved. . . .

In witness whereof he has duly attached his signature hereto and the seal of the corporation this 20th day of December, 1937.

GEORGE W. WHITNEY,

[Seal Bacardi Corporation of America]

Commonwealth of Pennsylvania

County of Philadelphia, ss:

On this 20th day of December A. D. 1937 before me a Notary Public in and for the County of Philadelphia, State of Pennsylvania, personally appeared George W. Witney known to me to be the person whose name is subscribed to the attached instrument and duly acknowledged that he had executed the same and requested me to certify to such fact.

Regina L. Hoey

Notary Public

[NOTARIAL SEAL]

In the Courts of Common Pleas of Philadelphia County
State of Pennsylvania

County of Philadelphia, ss:

I, John M. Scott, Prothonotary of the Courts of Common Pleas of said County which are Courts of Record having a common seal, being the officer authorized by the laws of the state of Pennsylvania to make the following certificate, acting by my Principal Deputy, Meredith Hanna, or my Second Deputy, John J. Hoerr,

Do Certify that Regina L. Hoey, Esq., whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe the signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

The impression of the seal of the Notary Public is not required by law to be filed in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this eight day of January in the year of our Lord one thousand nine hundred thirty-eight (1938).

John M. Scott, Prothonotary,
By: John J. Hoerr, Second Deputy Prothonotary.
Durante Absentia, Secundum Legem.

[Seal—Court of Common Pleas]

The transmission to the Circuit Court of Appeals of Plaintiff's original Exhibits "AT", "AU", "AV" and "AW" will be requested.

EXHIBIT AX FOR PLAINTIFF.

The People of Puerto Rico
Department of Finance
Bureau of Alcoholic Beverages and Narcotics

San Juan, Puerto Rico, January 27th, 1937.

Bacardi Corporation of America, San Juan, Puerto Rico,

Sirs: Reference is made to your letters of January 25 and 27, 1937, submitting for consideration of this Department labels of 4/5 Pint, 1 Pint and 4/5 Quart, for "Ron Hatuey", and photo-static copy of approval of the Federal Alcohol Administration of said labels.

You are advised that the label for containers of 4/5 Quart has been approved by the Department, but the labels for 4/5 Pint and 1 Pint are not approved, as the phrase "Puerto Rican Rum" does not meet the requirements of the regulations in force.

If it so happens that you have a large quantity of these smaller labels of 4/5 Pint and 1 Pint on hand, same may be used, provided an additional label is affixed to each bottle of rum manufactured in Puerto Rico with the said phrase printed in accordance with the size required by regulations of the Treasurer.

Respectfully,

R. SANCHO BONET

Treasurer of Puerto Rico.

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CONSUMO, 2009-2010

卷之二

May 100

19.11.1988

to visit him.

PROOF

卷之三十一

PUEBLO BIRAN

PUERTO RICAN

11. Who are the members of the family?

PREPARED AND BOILED

BACARDI

BRAND

SAN JUAN B

1990-1991
1991-1992
1992-1993
1993-1994
1994-1995
1995-1996
1996-1997
1997-1998
1998-1999
1999-2000

1111 N.W. 14th Street, Miami, Florida.

—
—

Figure 1. A photograph of a transverse section of a human sacrum showing the sacral foramina.

卷之三

... **REVIEW** OF THE LITERATURE ON THE EFFECTS OF POLYMER ADDITIVES ON POLY(1,3-PHENYLENE TEREPHTHALAMIDE)

—
—

2000-2001

10. The following table gives the number of hours worked by each of the 100 workers.

10. The following table shows the number of hours worked by each employee.

For more information about the study, please contact Dr. Michael J. Hwang at (319) 356-4550 or via email at mhwang@uiowa.edu.

Form L 5 Treasury Department
Federal Alcohol Administration February, 1936
Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits.

Date—January 20, 1937.

Pursuant to the application of Bacardi Corporation of America, whose address is San Juan, Porto Rico, the labels affixed to the reverse side hereof covering Ron Hatuey (Brand name) Rum (Class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size and statement of net contents appearing thereon in conformity with section 37 of Regulations 5 are also approved for use on bottles which conform to the requirements of article VII of Regulations 5.

A separate label known as the government label prepared in conformity with circular letter FA-41, and containing the mandatory label information required by section 32(c) of Regulations 5 (may but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government labels if required are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability or any violation of the Federal Alcohol Administration Act or Regulations thereunder resulting from the failure of any bottle bearing the labels herein approved or the contents of such bottle to conform to the statement and representations made on such labels.

W. S. ALEXANDER,
Administrator Federal Alcohol Administration,
Washington, D. C.

IDENTIFICATION NO. 1 FOR PLAINTIFF.

(Evidence Offered and Refused)

The Memorial of Puerto Rican rum producers to the Legislature of Puerto Rico is not set out in full here because it forms part of the complaint and is attached thereto.

IDENTIFICATION NO. 2 FOR PLAINTIFF.

(Evidence Offered and Refused)

Senate of Puerto Rico San Juan, P. R.

E. Gonzalez Mena Secretary.

I, Enrique Gonzalez Mena, Secretary of the Senate of Puerto Rico, certify:

That in the records of the session held by the Senate of Puerto Rico on April 15, 1937 (Sixty-seventh day of the First Regular Legislature of the Fourteenth Legislative Assembly) there appear the following particulars relative to House Bill 561 (Act No. 149, approved May 15, 1937):

"Three communications from the Secretary of the House of Representatives are read, remitting the following bills approved by the same, the numbers and titles of which are as follows:

"H. B. 561—To amend section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved

May 15, 1936, and for other purposes"; to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits, to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"The Secretary then reads the titles of said bills, which, after having been considered on first reading, by order of the President, shall be referred to the Finance and Improvement Committee.

"Upon motion of Senator Reyes Delgado, Subs. H. B. 297 and H. B. 321 and 561, already mentioned, go to second reading to be discussed before the Whole Committee, and without consideration by the Finance and Improvement Committee.

"The Senate is constituted in Committee of the Whole, and by order of its President it discusses, in the order in which they have been introduced, the bills the numbers and titles of which are as follows:

"H. B. 561—To amend section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal revenue taxes on alcoholic spirits and alcoholic beverages,

and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;" to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend section 14 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"After having finished its deliberations, the Committee of the whole presented its report, through its President, as follows:

"Second: The Committee of the Whole proposes that H. B. 561 be approved with the following amendments:

"Page 3:

"Line 5.—Substitute 'less than', at the end of same, for '4/5 pint and less'.

"Line 6.—Strike out 'half pint'.

"Line 16.—After 'bottler', substitute the semi-colon (;) for a period (.) and quotations ("), striking out the rest of the line.

"Strike out everything contained in line 17 and succeeding lines up to 25, inclusive.

"Page 4:

"Strike out everything contained in line 1 and following lines, up to line 6, inclusive.

"Line 24.—In the amendment inserted by the House in ink, between 'manufactured' and 'in' and after 'Rico' insert a comma (,) and add 'or in Continental United States'.

"Page 5:

"Line 6.—Strike out the amendment in ink inserted by the House between 'be' and 'shipped', or that is, the following: 'transported'.

"Strike out everything contained in lines 23, 24 25, inserting in their place the following:

"(b) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

"Page 6:

"Strike out everything contained in lines 1, 2 and 3."

"Each one of the items of the preceding report of the Committee of the Whole is considered by the Senate and voted, it being approved.

"The President states that there have been approved on second reading H. B. 409, H. B. 561 and S. B. 48.

"Upon motion of Senator Garcia Mendez, the Senate decides to consider on third reading said bills.

"H. B. 561 is considered on third reading and voted, which voting gives the following result:

"Affirmative votes:

Messrs. Benvenuti, Berrios,
Echevarria, Fiz Jimenez,
Garcia Mendez, Garcia Veve,
Iriarte, Ochart y Pacheco,
senora Perez Almiroty, senores
Ramos, Reyes Delgado, Serralles,
Valdes, Villanueva and the
President, Mr. Martinez Nadal 16

"Negative votes: 0

"Abstained votes:

Mr. Bolivar Pagan 1

"(It is stated that before the forgoing voting was taken, Mr. Bolivar Pagan requested and obtained the unanimous consent of the Senate to abstain from voting).

"The President states that H. B. 561 has been approved on third reading (by 16 affirmative votes) and orders that it be returned to the House of Representatives."

"Upon motion of Mr. Serralles, the Senate decides to request from the House of Representatives the return, for the purpose of reconsidering it, of H. B. 561, 'To amend Section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled 'An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the

Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes; "to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 14 of said Act by imposing conditions upon the holders of such permits; to add Section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"The following communication is read:

'House of Representatives of Puerto Rico.

Office of the Secretary.

San Juan, Puerto Rico, April 15, 1937.

Sir:—In compliance with the petition of that body, the House, in today's session, consented to return to the Senate, for reconsideration, H.B. 561 (Liquor Law). Complying with the said consent I return herewith three official copies of said bill.

Very truly yours,

(Sgd.) ANTONIO ARROYO,

Secretary, Hon. President,

Senate of Puerto Rico, San Juan, Puerto Rico.'

"Upon motion of Mr. Serralles, the Senate resolves to reconsider on second reading H.B. 561, to which the above transcribed communication refers, sending it to this effect to the Order of the Day.

"Upon motion of Senator Iriarte, the Senate is constituted

in Committee of the Whole, and it discusses, in the order in which they have been introduced by order of the President, the following matters in the Order of the Day:

"Fifth: H.B. 561, 'To amend Section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;" to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 14 of said Act by imposing conditions upon the holders of such permits; to add Section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.'

"After having finished its deliberations, the Committee of the Whole presents its report, through its President, proposing:

"Fifth: That H.B. 561, taking it as it was previously approved by the Senate, be again approved with the following amendments:

'Page 4:

"Line 17.—Between 'mark', and 'name', insert 'name'.
"Line 24.—After 'Rico', amendment in ink by the House, strike out the comma (,) and the following, which appears as an amendment in ink by the Senate: 'or in Continental United States'.

'Page 6:

"Between lines 15 and 16, insert a new section which will read as follows:

'Section 7.—In regard to trade-marks, the provisions of the Proviso of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner, of distilled spirits outside of the continental United States, at any time prior to said date.'

"Line 16.—Substitute '7', amendment in ink by the House, for '8'.

"The President presents separately, to the Senate, for its consideration, each one of the items of the preceding report of the Committee of the Whole, the same being voted and approved unanimously, with the exception of the item relative to H.B. 23, which was approved by a majority.

"Subs. S.B. 279, H.J.R. 118 and H.B. 23 are approved on second reading; and H.B. 561 is again approved on second reading, after having been reconsidered in such manner.

"By an agreement of the Senate, adopted upon motion of Mr. Serralles, H. P. 561 is reconsidered now in third reading and voted, which voting was taken with the following result:

"Affirmative votes:

Messrs. Benvenuti, Berrios,
Echevarria, Fix Jimenez,
Garcia Mendez, Garcia Veve,
Iriarte, Ochart, Pacheco,
Ramos, Reyes Delgado, Se-
rralles, Valdes and the Pre-
sident Mr. Martinez Nadal 14

"Negative votes: 0

"The President states that H.B. 561 has been reconsidered on third reading and once more approved in such manner, unanimously (14 votes on the affirmative) and orders that said bill be returned for a second time to the House of Representatives."

"Several communications from the Secretary of the House of Representatives are then read stating that the House has accepted the amendments introduced by the Senate to the bills the numbers and titles of which are as follows:

H.B. 561.—To amend Section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled 'An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture, and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;' to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon

such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"Several communications from the Secretary of the House of Representatives are then read sending the bills the numbers and titles of which are as follows, signed by the Speaker of the House and requesting the President of the Senate to sign them:

"H.B. 561. To amend section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;" to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend

Section 44 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"The President announces that he is going to sign, and signs the bills referred to and orders their return to the House of Representatives."

And to be sent to Messrs. Hartzell, Kelley & Hartzell, of San Juan, Puerto Rico, at their request, I issue, sign and seal this certification in my office, this fifth day of August of the year one thousand nine hundred thirty-seven.

ENRIQUE GONZALEZ MENA,

Secretary of the Senate of Puerto Rico.

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:—

That in accordance with a request of Messrs. Hartzell, Kelley & Hartzell, of San Juan, P. R., I, M. Ashford, Acting Executive Secretary of Puerto Rico, do hereby certify: That from the records of this office it appears that "Brugal & Compania, C. Por A." is a corporation organized under the laws of the Dominican Republic, to which a certificate of registration was issued by this office on the ninth day of July, nineteen hundred and thirty-four.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this tenth day of August, A. D., nineteen hundred and thirty-seven.

M. ASHFORD,

Acting Executive Secretary.

[Seal of Puerto Rico]

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:—

That in accordance with a request of Messrs. Hartzell, Kelley and Hartzell, of San Juan, P. R., I, M. Ashford, Acting Executive Secretary of Puerto Rico, do hereby certify: That from the records of this office it appears that "National Liquor Company Inc." is a corporation organized under the laws of Puerto Rico, to which a certificate of registration was issued by this office on the thirtieth day of June, nineteen hundred and thirty-four.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this tenth day of August, A. D., nineteen hundred and thirty-seven.

M. ASHFORD,

Acting Executive Secretary.

[Great Seal of Puerto Rico]

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:—

That in accordance with a request of Messrs. Hartzell, Kelley & Hartzell, of San Juan, P. R., I, M. Ashford, Acting Executive Secretary of Puerto Rico, do hereby certify: That from the records of this office it appears that "Compania Ron Carioca Destileria, Inc.", is a corporation organized under the laws of the State of Delaware, to which a certificate of registration was issued by this office on the sixth day of August, nineteen hundred and thirty-six.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this tenth day of August, A. D., nineteen hundred and thirty-seven.

M. ASHFORD,

Acting Executive Secretary.

[Great Seal of Puerto Rico]

EXHIBIT A FOR INTERVENOR.

The People of Puerto Rico
Department of Finance
Bureau of Alcoholic Beverages and Narcotics.

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, by these presents certify:

That in accordance with the files of the Bureau of Alcoholic Beverages and Narcotics of the Treasury Department, permits have been issued to Puerto Rico Distilling Co., of Arecibo, Puerto Rico, which authorize it to distill, rectify and warehouse distilled spirits, in Puerto Rico, in accordance with the laws of Puerto Rico and Regulations applicable thereto, and the Federal Laws and regulations applicable thereto.

In witness whereof, and on petition of Ronrico Corporation, of San Juan, Puerto Rico, I have signed these presents and caused the official seal of this Department to be affixed hereto, in the City of San Juan, Puerto Rico, on this seventh day of August, 1937.

R. SANCHO BONET, Treasurer of Puerto Rico,
By F. A. Ramirez Vega, Assistant-Treasurer.

Internal Revenue Stamps for \$1-50 cancelled.

IDENTIFICATION NO. 2 FOR INTERVENOR.

The People of Puerto Rico
Department of Finance
Bureau of Alcoholic Beverages and Narcotics.

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do certify by these Presents:

That as recorded in the files of the Bureau of Alcoholic Beverages and Narcotics of the Finance Department, the firm Ronrico Corporation, of San Juan, Puerto Rico, on behalf of Puerto Rico Distilling Company, of America, Puerto Rico, has shipped rum from January 1, 1936, up to June 30, 1937, in the amount

of 281,060.8 gallons proof, Puerto Rico Distilling Company, of Arecibo, having paid the taxes thereon in the amount of \$562,121.60.

In witness whereof, and on petition of Ronrico Corporation, of San Juan, Puerto Rico, I have signed these presents and caused the official seal of this Department to be affixed hereto, in the city of San Juan, Puerto Rico, this the 7th day of August, 1937.

R. SANCHOT BONET, Treasurer of Puerto Rico,

by F. A. Ramirez Vega, Assistant-Treasurer.

Internal Revenue Stamps for \$1-50 cancelled.

The transmission to the Circuit Court of Appeals of intervenor's original Exhibit "B" will be requested.

EXHIBIT C FOR INTERVENOR.

La Correspondencia
March 20, 1937.

Try Hatuey

A good rum at everybody's reach

Made by Bacardi

Rum 89 Proof

(Bat in a circle)

The transmission to the Circuit Court of Appeals of intervenor's original Exhibits "D", "E", "F", "G", "H", "I" and "J" will be requested.

ORDER.

[Filed February 24, 1939.]

On this twenty-fourth day of February, 1939, the foregoing statement, having been presented to me, the same is hereby in all things allowed and approved, and the same is hereby ordered filed as a "Statement of the Evidence", to be included in the

record of appeal in the above entitled cause, as provided in paragraph "b" of Equity Rule 75.

ROBT. A. COOPER,
District Judge.

[MEMORANDUM: Orders of enlargement of time for docketing cases to, and including April 21, 1939, are here omitted. A. I. CHARRON, *Clerk.*] _____

MOTION FOR AN ORDER FOR THE TRANSMITTAL OF CERTAIN ORIGINAL EXHIBITS AS PART OF THE RECORD.

[Filed November 28, 1938.]

Now comes, intervenor-appellant, Destileria Serralles, Inc., and respectfully states:

1. That intervenor-appellant has lodged on this day, November 28, 1938, in the office of the clerk of this court, a statement of evidence for use in connection with its appeal from the decree made and entered in the above entitled cause on the thirtieth day of June, 1938.
2. That Plaintiff's Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV" and "AW" consist of labels, samples of advertisements and photographs, and that Intervenor-Appellant's Exhibits "B", "D", "E", "F", "G", "H", "I", and "J" consist of samples of advertisements with pictures which requires that said original exhibits be transmitted to the clerk of the Circuit Court as part of the record.

Wherefore Destileria Serralles Inc., respectfully prays that an order be entered by this court directing the clerk to transmit the above mentioned original exhibits as part of the record on appeal.

San Juan, Puerto Rico, November 28, 1938.

ANTONIO J. MATTA,

J. SIFRE JR.,

Solicitors for

DESTILERIA SERRALES, INC.,

Intervenor-Appellant.

Copy received this twenty-eighth day of November, 1938.

HARTZELL KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Solicitors for

BACARDI CORPORATION OF AMERICA,

Plaintiff-Appellee.

Be it so.

ROBT. A. COOPER, *Judge.*

MOTION REGARDING TRANSMITTAL OF CERTAIN ORIGINAL
EXHIBITS AS PART OF THE RECORD.

[Filed January 26, 1939.]

Now comes the plaintiff-appellee, Bacardi Corporation of America, by its undersigned attorneys, and respectfully states:

I. That the plaintiff consents to and makes its own that part of the motion filed by the intervenor-appellant Destileria Serralles, Inc., on November 28, 1938, wherein it is requested that the originals of Plaintiff's Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV", and "AW" be transmitted to the clerk of the Circuit Court of Appeals as part of the record of this case; and the plaintiff has no objection to the transmittal of original Intervener-Appellant's Exhibit "J".

II. That the plaintiff-appellee objects to that part of the said motion of intervenor-appellant Destileria Serralles, Inc., wherein it is requested that the originals of Intervener's Exhibits "B", "D", "E", "F", "G", "H" and "I" be transmitted to the clerk of the Circuit Court as part of the record, because the said exhibits are part of the evidence presented by intervenor Puerto Rico Distilling Company, which has not taken an appeal in this case, and the evidence presented by it was not adopted in any form by the defendant nor by the other intervenor Destileria Serralles, Inc.

III. That plaintiff respectfully moves that this court order that the original labels attached to Plaintiff's Exhibits "AL", "AM", and "AP", be transmitted to the clerk of the Circuit of Appeals

as part of the record as it is impossible to make true and exact copies thereof.

Wherefore, the plaintiff respectfully prays that on order be entered by this court in accordance with this motion.

San Juan, Puerto Rico, January 26, 1939.

HARTZELL, KELLEY & HARTZELL,
by RAFAEL FERNANDEZ,
Attorneys for Plaintiff-Appellee.

Copy received this twenty-sixth day of January, 1939.

JAIME SIFRE Jr.,
ANTONIO J. MATTIA,
Attorney for Intervener, DESTILERIA SERRALES, INC.

ORDER.

[Filed February 11, 1939.]

Intervener-appellant Destileria Serralles, Inc., filed a motion, dated November 28, 1938, requesting the transmittal to the Circuit Court of Appeals for the First Circuit of certain original exhibits in connection with the appeal taken in this case; and plaintiff-appellee Bacardi Corporation of America filed a motion dated January 26, 1939, consenting in part and objecting in part to the said motion of Destileria Serralles, Inc. and requesting that some of plaintiff's original exhibits be also transmitted to the clerk of the Circuit Court of Appeals as part of the record on appeal.

The parties having been heard on the said motions, the court hereby grants the requests as to which there is no controversy, and therefore orders that when the record of the appeal in this case is sent to the Circuit Court of Appeals for the First Circuit, that the originals of Plaintiff's Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV", "AW", "AL", "AM" and "AP"; and the original of Intervener-Appellant's Exhibit "J", be transmitted to the said court as part of the record on appeal.

As to the request of intervenor-appellant Destileria Serralles,

Inc. for the transmittal to the Circuit Court of Appeals of the originals of Intervener's Exhibits "B", "D", "E", "F", "G", "H", and "I", which were presented in evidence by intervenor Porto Rico Distilling Company, the court overrules the objection made by the plaintiff-appellee to the said request, and orders that the originals of said Intervener's Exhibits "B", "D", "E", "F", "G", "H", and "I" be transmitted to the said court as part of the said record on appeal. To this ruling plaintiff-appellee excepted.

Given at San Juan, P. R. this eleventh day of February, 1939.

ROBT. A. COOPER,
District Judge.

PRAECIPE.

[Filed March 9, 1939.]

To the Clerk of the United States District Court for the District of Puerto Rico:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following, and no other papers and exhibits, to wit:

1. Bill of complaint, as amended.
2. Defendant's motion to dismiss.
3. Defendant's answer.
4. Opinion, findings of facts and conclusions of law on the permanent injunction, filed May 9, 1938.
5. Additional findings of facts filed June 28, 1938.
6. Final decree.
7. Memoranda stating the following:
 - (a) Date of petition for appeal.
 - (b) Date of order allowing appeal.
 - (c) Date, penalties, names of obligors and conditions of appeal bond.
 - (d) Date of citation and of service thereof.

8. Defendant's assignment of errors.
9. Stipulation as to one record.
10. Order on stipulations as to one record.
11. Order extending the time for filing the transcript of record, dated August 24, 1938, January 30, 1939 and February 21, 1939.
12. Journal entries of November 25, 1938 and December 28, 1938 as to order of court extending time to file record on appeal.
13. Statement of the evidence and order approving same.
14. Order of February 11, 1939 for sending up certain original exhibits.
15. This praecipe.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States District Court of Appeals for the First Circuit, and to be filed in the office of the clerk of the latter court at Boston, Massachusetts, on or before the thirty-first day of March, 1939, pursuant to the order of this court enlarging and extending said time, the said transcript to be printed under the supervision of the clerk of the Circuit Court of Appeals for the First Circuit.

San Juan, Puerto Rico, March 9, 1939.

B. FERNANDEZ GARCIA,

Attorney General.

JESUS A. GONZALEZ,

Assistant Attorney General.

E. CORDOVA DIAZ,

Deputy Attorney General.

Service of above praecipe and receipt of copy thereof acknowledged this ninth day of March, 1939.

HARTZELL, KELLEY & HARTZELL,

RAFAEL FERNANDEZ,

Attorney for Appellee.

MOTION.

[Filed March 6, 1939.]

Now comes intervenor-appellant Destileria Serralles, Inc., through its undersigned attorneys and respectfully alleges:

1. That the petitioner desires to include in the transcript of the record to be filed in the United States Circuit Court of Appeals for the First Circuit, the following:

(a) Bill of complaint, as amended.

(b) Petition for intervention filed by Destileria Serralles, Inc., and order allowing the same.

(c) Answer of Destileria Serralles, Inc.

(d) Journal entries of dates of the trial, from January 17, to January 20, 1938.

(e) Findings of fact and conclusions of law.

(f) Opinion, decree and order granting the permanent injunction.

(g) Memoranda stating the following:

(1) Date of petition for appeal;

(2) Date of order allowing the same;

(3) Date, penalties, names of the obligors and conditions of the appeal bond;

(4) Date of the citation and date of the service thereof.

(h) Assignment of errors.

(i) Statement of evidence and order approving the same.

(j) Orders extending the time for the filing of the transcript of the record dated August 23, 1938, November 26, 1938, January 9, 1939 and February 21, 1939.

(k) Order of February 11, 1939 for the sending up of certain original exhibits, to wit: Plaintiff's original Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AW", "AL", "AM", and "AP"; intervenor-appellant's original Exhibit "J", and intervenor Porto Rico Distilling Company's original Exhibits "B", "D", "E", "F", "G", "H" and "I".

(1) Order of the court granting this motion.

2. That the petitioner is willing to stipulate as to what shall form part of the record on appeal but the attorneys for the plaintiff-appellee, Bacardi Corporation of America, refuse to do so upon the ground that Rule 14, Paragraph 3 of the Revised Rules of the United States Circuit Court of Appeals for the First Circuit, do not apply.

3. That according to Rule 14, Paragraph 3 of the Revised Rules of the United States Circuit Court of Appeals for the First Circuit, where there is no agreement between the parties as to what shall form part of the record, the trial judge upon application and after reasonable notice to the opposite party shall determine what must be included in such transcript.

Wherefore, your petitioner prays that an order be entered by this honorable court determining what shall be included in the transcript of the record on appeal.

San Juan, P. R. March 6, 1939.

ANTONIO J. MATTA,
J. SIFRE JR.,

Attorneys for Intervenor-Appellant,
DESTILERIA SERRALLES INC.

Copy received this sixth day of March, 1939.

HARTZELL, KELLEY & HARTZELL,
RAFAEL FERNANDEZ,
Attorneys for Plaintiff-Appellee,
BACARDI CORPORATION OF AMERICA.

MOTION OF PLAINTIFF-APPELLEE WITH REFERENCE TO
TRANSCRIPT ON APPEAL.

[Filed March 10, 1939.]

Now comes the plaintiff-appellee Bacardi Corporation of America, through its undersigned attorneys, and respectfully states:

I. With reference to paragraph 2 of the motion filed by intervenor-appellant Destileria Serralles, Inc. dated March 6, 1939, the

plaintiff-appellee says that it has been unwilling to make a stipulation for the transcript of the record on appeal in this case as proposed by the intervenor-appellant Destileria Serralles, Inc., in accordance with paragraph 3 of Rule 14 of the Rules of the United States Circuit Court for the First Circuit, because the plaintiff-appellee believes that the instant case being one in equity, the procedure should be that set forth in Rule 75 of the "Rules of Practice for the Courts of Equity of the United States" adopted November 4, 1912, effective February 1, 1913.

II. That if this court should decide that the Rules of the United States Circuit Court for the First Circuit should control in this case as contended by the intervenor-appellant Destileria Serralles Inc. then the plaintiff-appellee, Bacardi Corporation of America, respectfully requests that in addition to the documents enumerated in the above mentioned intervenor-appellant's motion of March 6, 1939, the following other documents be included in the transcript of the record on appeal.

(a) "Opinion, Findings of Fact and Conclusions of Law", entered by this court on May, 6, 1938, in the case of Rafael del Valle Pijem v. Rafael Sancho Bonet, Treasurer of Puerto Rico, Equity No. 2237.

This document is necessary because it is referred to in the opinion of the court on the permanent injunction in the instant case.

(b) Proposed findings of fact and conclusions of law submitted by plaintiff on May 24, 1938.

(c) "Plaintiff's Exception to the Conclusions of Law" dated June 30, 1938.

These documents are necessary in order that the plaintiff-appellee may be able to show the findings of fact and conclusions of law submitted by it and those not adopted by the court, to lend support to the final decree herein.

(d) Transcription of title and of paragraph XXIII of "Motion

for Corrections to Statement of Evidence", filed by plaintiff-appellee on January 26, 1939.

- (e) Order of February 11, 1939, concerning corrections to the statement of evidence filed by intervenor-appellant Destileria Serralles Inc.
- (f) "Motion for an Order for the Transmittal of Certain Original Exhibits as Part of the Record", filed by intervenor-appellant Destileria Serralles Inc. on November 28, 1938.
- (g) "Motion Regarding transmittal of Certain Original Exhibits as Part of the Record", filed by plaintiff-appellee on January 26, 1939.

These documents are necessary in order to enable the plaintiff-appellee to insist on the point that the evidence submitted by intervenor Puerto Rico Distilling Co. should not be considered on this appeal.

San Juan, Puerto Rico, March 9, 1939.

HARTZELL, KELLEY & HARTZELL,
by RAFAEL FERNANDEZ,
Attorneys for Plaintiff-Appellee.

Copy received this tenth day of March, 1939.

JAIMÉ SIFRE Jr.,
ANTONIO J. MATTÀ,
Attorney for Intervenor-Appellant,
DESTILERIA SERRALES, INC.

ORDER SETTLING CONTENTS OF THE TRANSCRIPT OF THE RECORD.

[Filed March 15, 1939.]

On motion of Destileria, Serralles, Inc., intervenor-appellant, in the above-entitled cause to determine how much of the record in said cause shall be included in the transcript of the record on appeal in the said cause in the United States Circuit Court of Appeals for the First Circuit, and after hearing counsel for both the appellants and appellee, it is ordered that the transcript of

the record shall contain copies of the following papers, and no others:

1. Bill of complaint, as amended.
2. Defendant's motion to dismiss.
3. Defendant's answer.
4. Petition for intervention filed by Destileria Serralles, Inc., and order allowing same.
5. Answer of Destileria Serralles, Inc.
6. Journal entries of dates of trials from January 17 to January 20, 1938.
7. Findings of fact and conclusions of law on the permanent injunction filed May 9, 1938.
8. Plaintiff's proposed conclusions of law Nos. 15 and 16 submitted by plaintiff on May 24, 1938.
9. Additional findings of fact filed June 28, 1938.
10. Plaintiff's exception to the conclusions of law dated June 30, 1938.
11. Opinion, decree and order granting the permanent injunction.
12. Memorandum stating the following:
 - (a) Date of petition for appeal
 - (b) Date of order allowing same
 - (c) Date, penalties, names of obligors and conditions of the appeal bond
 - (d) Date of citation and date of service thereof.
13. Defendant's assignment of errors.
14. Assignment of errors of Destileria Serralles, Inc.
15. Stipulation as to one record and the order on said stipulation.
16. Orders extending the time for the filing, settling and approval of the statement of the evidence dated August 24, 1938, November 5, 1938, November 26, 1938, December 15, 1938, January 9, 1939, January 31, 1939, February 9, 1939 and February 24, 1939.

17. Transcription of title and paragraph 23 of motion for correction of the statement of the evidence filed by plaintiff-appellee on January 26, 1939.
18. Order of February 11, 1939, concerning corrections to the statement of the evidence filed by intervenor-appellant, Destileria Serralles, Inc.
19. Statement of evidence and order approving the same.
20. Orders extending the time for the filing of the transcript of the record by intervenor-appellant Destileria Serralles, Inc., dated August 23, 1938, November 26, 1938, January 29, 1939 and February 21, 1939.
21. Orders extending the time for the filing of the transcript of the record by defendant dated August 24, 1938, January 30, 1939 and February 21, 1939.
22. Journal entries of November 25, 1938, and December 28, 1938 as to the order of the court extending the time for defendant to file record on appeal.
23. Motion for an order for the transmittal of certain original exhibits as part of the record filed by intervenor-appellant, Destileria Serralles, Inc. on November 28, 1938.
24. Motion regarding transmittal of certain original exhibits as part of one record filed by plaintiff-appellee on January 26, 1939.
25. Order of February 11, 1939, for the sending up of certain original exhibits, to wit: Plaintiff's original Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AW", "AL", "AM", and "AP"; intervenor-appellant's original Exhibit "J", and intervenor Puerto Rico Distilling Company's original Exhibits "B", "D", "E", "F", "G", "H" and "I".
26. Defendant's praecipe.
27. Motion of Destileria Serralles, Inc., dated March 6, 1939, praying for an order for the determination of what should be included in the transcript of the record.
28. Motion of plaintiff-appellee with reference to the transcript on appeal dated March 9, 1939.

29. This order.
30. Certificate of the clerk of the court as to the accuracy of the record.

The plaintiff-appellee has requested that the "Opinion, Findings of Fact and Conclusions of Law", entered by this court on May 6, 1938 in the case of *Rafael del Valle Pijem v. Rafael Sancho Bonet, Treasurer of Puerto Rico*, Equity No. 2237, be included in the transcript of the record on appeal but this the court considers unnecessary because the said "Opinion, Findings of Fact and Conclusions of Law" are embodied in an official document of this court, which is a court of record, and the said document may be referred to if necessary.

San Juan, Puerto Rico, March 15, 1939.

ROBT. A. COOPER,
U. S. District Judge.

CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF PUERTO RICO, ss:

I, Lulu G. Donohue, clerk of the United States District Court for the District of Puerto Rico do hereby certify that the foregoing is a true and correct copy of the transcript of record on appeal of papers and proceedings in the above-entitled case, on file and of record in my office as called for by the foregoing "Order settling contents of the Transcript of the Record", filed March 15, 1939.

In testimony whereof I hereunto set my hand and affix the seal of said court at San Juan in said District this thirteenth day of April, 1939.

LULU G. DONOHUE,
Clerk United States District Court for Puerto Rico.

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

On October 17, 1939, these causes came on to be heard together, and were fully heard by the court, Honorable Scott Wilson and Honorable Calvert Magruder, Circuit Judges, and Honorable Hugh D. McLellan, District Judge, sitting.

Thereafter, to wit, on January 12, 1940, the following Opinion of the Court was filed :

OPINION OF THE COURT.

January 12, 1940.

McLELLAN, J. Bacardi Corporation of America, a Pennsylvania Corporation, filed a bill of complaint in the District Court of the United States for Puerto Rico, seeking to enjoin the defendant, Treasurer of Puerto Rico, and others from enforcing certain Acts of the Legislature of Puerto Rico. The alleged grounds for relief are in substance that these Acts contravene the Constitution of the United States, the Organic Act of Puerto Rico and a Treaty between the United States, Cuba and other countries. The District Court, having made certain findings of fact, concluded that the legislation attacked in the bill of complaint was not a valid exercise of the police power and was repugnant to the Commerce Clause of the Constitution of the United States. The District Court also concluded that the legislation was invalid because it violates the due process clause of the Constitution of the United States and of the Organic Act of Puerto Rico and because it deprives the plaintiff, appellee, of the equal protection of the Laws for which the Organic Act provides. The final decree from which these appeals were taken by the Treasurer of Puerto Rico, defendant, and by Destileria Serralles, Inc., intervenor, reads so far as need be stated as follows:

"It is ordered, adjudged and decreed: That the defendant Rafael Sancho Bonet, Treasurer of Puerto Rico, his successors, his agents and all those acting under his authority, and the Destileria Serralles, Inc., the Puerto Rico Distilling Company, their successors,

officers and agents, and any and all persons holding permits from the Treasurer of Puerto Rico under the alcoholic beverages laws of Puerto Rico, be and are hereby forever and perpetually enjoined and restrained from in any way enforcing or attempting to enforce against the plaintiff Bacardi Corporation of America the provisions of Sections 40 and 44 of Act No. 6 approved June 30, 1936, as amended by Act No. 149 approved May 15, 1937, and the provisions of Section 7 of said Act 149, insofar as said provisions prohibit complainant from marketing its products in Puerto Rico or shipping its products out of Puerto Rico with the Bacardi trade marks and labels attached thereto as now or hereafter authorized by the Federal Alcohol Administration, and from using its corporate name on its products; and also, from in any way enforcing or attempting to enforce against said plaintiff the provisions of Section 44(b) of said Act No. 6 as amended by said Act No. 149, insofar as said provisions prohibit the plaintiff from shipping its products to the United States or elsewhere in bulk; * * *

In order that the history and declared purpose of the legislation thus stricken may appear, we set forth in the margin the pertinent portions of Act No. 115 approved May 15, 1936, and of

Act No. 115. "*Alcoholic Beverage Law of Puerto Rico*", approved May 15, 1936; Laws of 1936, regular session, pp. 610 *et seq.*

"Sec. 41.—* * *

B. After the thirty (30) days following the taking effect of this Act, no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. * * *

C. The following persons shall be entitled to permits upon application:

(1) Every person who on February 1, 1936, possesses (possessed) a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rectifying, and bottling distilled spirits, and who is (was) on that date engaged in said business.

(2) Any other person who may fully comply with the following requisites:

(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among other particulars, the following specific information:

(I) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin

Act No. 6, approved June 30, 1936, effective July 1, 1936, which repealed Act No. 115 and was of an experimental character and was by its terms to expire September 30, 1937. Following these

operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and the insular laws.

(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico."

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.

(i) The production capacity of the existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restrictions shall not apply to any new brand, trade name, or trade mark which may in the future be used in Puerto Rico."

Acts there appear in the margin the relevant provisions of Act No. 149 of 1937, including Section 1, Section 2, amending Section

Act No. 6, "Spirits and Alcoholic Beverages Act", approved June 30, 1936; Law of 1936, special session, pp. 44, et seq.

"To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear on the label the following phrase in English: '*Puerto Rican Rum*', in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said rum was distilled. On the label of every alcoholic beverage shall also appear the word '*Distilled*', '*Rectified*', or '*Blended*', as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose. (at p. 76.)

"Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, under a trade mark or commercial name, because such trade mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, That this limitation shall not apply to any trade mark or commercial name, used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided*, further, That distilled spirits, with the exception of ethyl alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer."

Act No. 149, approved May 15, 1937; Laws of 1937, regular session pp. 392-396.

"Be it enacted by the Legislature of Puerto Rico:

Section 1.—Section 1 is hereby amended by adding Section 1 (b) to Act No. 6, approved June 30, 1936, entitled 'An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administra-

40 of Act No. 6 of 1936, Section 3, amending Section 44 of the same Act, Section 4, adding Section 44(b) thereto, and Section 7 thereof, to which the decree of the District Court refers.

tion and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes', which section shall be as follows:

'Section 1. The short title of this Act shall be Spirits and Alcoholic Beverages Act.'

'Section 1 (b).—*Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market.

Section 2.—Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

'Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (1/8) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified, or blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; Provided, further, That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears.'

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

'Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly,

These sections of Act No. 149 prohibit the manufacture (by holders of the requisite permit) of alcoholic beverages on which there appears whether on the container or elsewhere "any trade mark, brand, trade name, commercial name, corporation name or any other designation if said trade mark, brand, trade name, commercial name, corporation name or other designation, design or drawing has been used previously * * * anywhere outside the Island of Puerto Rico." This limitation is made inapplicable to

Provided, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936.'

Section 4.—Section 44 (b) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

'Section 44 (b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided*, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled.'

Section 7.—In regard to trade marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date."

designations by a manufacturer, bottler or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936. By Section 7, this limitation or proviso is made applicable in regard to trade marks only to such "as shall have been used exclusively in the Continental United States * * * prior to February 1st, 1936, provided such trade marks shall not have been used, in whole or in part * * * outside of the Continental United States, at any time prior to said date."

Act No. 149, Section 4, also provides that with exceptions not here relevant distilled spirits may be shipped or exported from Puerto Rico or imported into Puerto Rico "only in containers holding not more than one gallon".

Bacardi Corporation of America aimed several blows at this legislation, and some of them took effect. We refrain, for the time being, from comment upon the apparent object and the avowed purpose of the Puerto Rican Legislature, because we want first to consider a question which needs for its determination nothing of this sort. The District Court was impressed with the suggestion that the Commerce clause of the Constitution of the United States invalidates the statutory provisions as to the use of trade marks and as to the maximum size of the containers required for shipment. The Commerce clause (Constitution, Article 1, Section 8, Clause 2) grants the Congress power "to regulate Commerce with foreign nations, and among the several states, and with the Indian Tribes." By necessary implication, it prevents a state from regulating such commerce. But Puerto Rico is not a state. It is an organized Territory of the United States though not yet "incorporated" into the Union. *Puerto Rico v. Shell Co.*, 302 U.S. 253, and the indubitable right of the Congress to regulate the commerce of Puerto Rico is founded on the Constitutional power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." (Constitution, Article IV, Section 3, Clause 2). The power is in no direct sense dependent upon the Commerce clause which as this court has said "does not extend to Puerto Rico". *Lugo v. Suazo*, 59 F. (2d) 386,

390. *Cf. Inter-Island Steam Navigation Co. v. Hawaii*, 96 F. (2d) 412.

The decree of the District Court declaring such legislation unconstitutional can not be affirmed upon the ground that the Puerto Rican statutes violate the Commerce clause of the Constitution of the United States.

The next question is whether the Puerto Rican statutes constitute a valid exercise of the police power of the Insular Legislature in view of the due process clause of the Constitution of the United States and of the Organic Act for Puerto Rico. And in discussing the Insular police power we shall consider whether it is relevantly narrowed either by the Federal Alcoholic Administration Act or by the Convention between the United States and Cuba.

The police power of the Puerto Rican Legislature depends upon the Organic Act for Puerto Rico passed by the Congress of the United States in 1917. This Act organizes the Territory and erects "the typical American governmental structure consisting of three independent departments—legislative, executive and judicial" *Puerto Rico v. Shell Co., supra*. To the Insular Legislature, the Organic Act extends legislative authority as "to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal all laws and ordinances of every character in force in Porto Rico or municipality or district thereof on March 2, 1917 in so far as alteration, amendment, modification or repeal may be consistent with the provisions of this chapter." U.S. Code, Title 48, Section 821.

Clearly enough, the Organic Act of Puerto Rico authorizes legislation for the control of the manufacture and traffic in rum and other ardent spirits unless such legislation trespasses upon a field forbidden by the Constitution or by the Congress.

The appellee urges that the territorial legislation is invalid because it conflicts with the Federal Alcohol Administration Act, and as examples of such asserted conflict, says:

"(a) American Bacardi has been authorized under the Federal Law to use on its product to be shipped from Puerto Rico certain labels which have been presented in evidence. Under the local statute the plaintiff is prohibited from using them (Section 44 of Law No. 6);

(b) The Federal statute authorizes shipment in bulk in containers of more than one gallon, while the local statute (Section 44(b) prohibits such shipments."

As to labels, the Federal Alcohol Administration Act, aiming at unfair competition and other unlawful practices, forbids the introduction into interstate or foreign commerce of liquor unless labelled in accordance with regulations established by the Administration in such a way as to prevent deception of the consumer and the like. Such being the purpose of the Act, its effect was not to deprive the Legislature of Puerto Rico of the right to enact the territorial statute restricting the use of labels.

Nor does it seem to us correct to say, as does the appellee, that "the Federal statute authorizes shipment in bulk in containers of more than one gallon". What the statute does is to forbid the disposition of liquor in bulk except in pursuance of regulations of the Federal Alcohol Administration. We cannot read into this statute an intent upon the part of the Congress to bar the territorial statutes governing shipments in bulk.

Consistent with the view that the Federal Alcohol Administration Act was not intended to deprive territories of the right, in the exercise of their police powers, to limit the use of labels, or to limit the size of containers to be used under certain circumstances, is the form of permit received by the appellee, which is expressly "conditioned upon compliance with the laws of all states" in which the applicant engages in business. We are concerned here not with Congressional power but with the question whether Congress has so exercised that power as to close the door to the territorial legislation here considered. In *McDermott v. Wisconsin*, 228 U.S. 115, on which the appellee relies, the right of a state to impose burdens upon or discriminate against Interstate Commerce was at stake and we think that case not at all controlling upon the present

aspect of the case at bar. The District Court was right in not including among the conclusions of law requested by the appellee the ruling "that Sections 40, 44 and 44(b) of Act No. 6 of June 30, 1936 as amended by Act No. 149 of May 15, 1937 are invalid as contrary to the Federal Alcoholic Administration Act."

The appellee which had acquired by contract the right to use the trade marks of the Cuban Bacardi Corporation urges that the District Judge erred in the refusal to rule in substance that the legislation here in question "prohibiting the use of certain trade marks conflicts with the * * * trade mark convention of February 20, 1929, between the United States and Cuba and is, therefor, invalid." As to this contention the District Judge said:

"It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power."

A summarization of the Convention would prolong this opinion unduly and is needless. Its purpose was to prevent piracy of trade marks, a matter which is not here involved. It was not intended to have and does not have the effect of invalidating local laws and regulations of the type here in question. We think the District Court's refusal to rule that the legislation was invalid by virtue of the Convention between the United States and Cuba was right.

We come now to the question whether the provisions of the Puerto Rican legislation forbidding in substance, and subject to limitations heretofore stated and hereafter referred to, the making of rum, on the container of which or elsewhere, there appears a trade mark or corporation name previously used outside of Puerto Rico and forbidding the shipping of rum in containers holding more than a gallon violate the due process clause appearing both in the Constitution of the United States and the Organic Act of Puerto Rico.

The due process clause of the Fifth Amendment to the Constitu-

tion is so identical with Section 2 of the Organic Act providing against the enactment of any law depriving any person of life, liberty or property without due process of law as to preclude any detailed discussion of what parts of the Federal Constitution extend to Puerto Rico.

The District Court ruled that "the provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149 approved May 15, 1937, prohibiting the use of certain trade marks and corporate names, * * * violate the due process clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid." A like ruling was made with reference to Section 44 (b) of Act No. 6 as added by Act No. 149 of 1937 "insofar as it prohibits the exportation of rum legally manufactured in Puerto Rico in containers of more than a gallon." In his opinion, the District Judge having called attention to the intent and policy of the statutes as expressed by the Legislature and the restrictive use of trade marks and corporate names for which the statutes provide expressed the view that "it is difficult to see how the 'evil' mentioned in the preamble was corrected by the attempted 'remedy' ". Later, the court said:

"If the Legislature of Puerto Rico desires to eliminate all competition by foreign capital as a means of protecting the liquor industry, and so as to avoid the increase and growth of financial absenteeism, there is a very simple and direct way to accomplish this purpose. I know of no reason why the Legislature of Puerto Rico may not, as Pennsylvania has done, deny to any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico. It may limit the number of licenses which may be granted even to residents and citizens of Puerto Rico. I do not mean to say that such a policy would be wise or desirable. That is a legislative question. But, if the evil which the legislation here under consideration condemns is to be eliminated, some method other than that provided must be adopted."

In saying that Puerto Rico could constitutionally "deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico", the District Court was right. *La Tourette v. McMaster*, 248 U.S. 465, supporting the constitution-

ality of the legislative exclusion of non-resident insurance agents, and *Premier-Pabst Co. v. Grosscup*, 298 U.S. 226, where the constitutionality of an act forbidding the sale of beer within Pennsylvania unless duly licensed, and forbidding the issue of a license to a corporation unless all of its officers and directors and 51% of its stockholders were and for two years had been residents of the state, was conceded.

But we think that having the absolute power to prohibit foreign corporations from manufacturing or selling intoxicants the Puerto Rican Legislature had the right to prescribe the conditions under which such business might be conducted. The greater power includes the less. *Ziffrin v. Martin*, decided November 13, 1939 by the Supreme Court of the United States; *Seaboard Air Line Railway v. North Carolina*, 245 U.S. 298, 304. To say the least, the legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition.

The legislative purpose to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital, so as to avoid the increase and growth of financial absenteeism and to favor this domestic industry and to protect it against any unfair competition, was legitimate. And we may not strike down any legislation designed to effectuate such purpose just because it may be thought unlikely completely to accomplish the desired result. Whether the statutes prohibiting the use of certain trade marks and corporate names and whether the legislation forbidding shipments in bulk (presumably passed in part to prevent an evasion of the trade mark prohibition) will accomplish the desired result is not the question for our determination. The Legislature of Puerto Rico possessing "substantially all the local legislation powers of a state legislature, in all respects here involved" including the local police powers particularly applicable to the liquor business, has manifested its faith in the efficacy of its policy through three successive sessions, the session of 1936, the special session of 1936 and the regular session of 1937, and it is not for us to say whether its faith is well founded. Even if we knew enough about the matter

to form a judgment as to the wisdom of these statutes we should be exceeding our function were we to attempt to substitute our judgment for that of the Legislature. As said by the Supreme Court, in *Nebbia v. New York*, 291 U.S. 502, 537, "with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. * * * Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power."

Bearing in mind that doubt is not enough, that unconstitutionality must clearly appear in order to warrant us in holding legislation void, and being unable to say that the statutes here questioned so lack any reasonable basis as to be arbitrary or capricious, we think they should not be invalidated as repugnant to the due process clause of the Constitution of the United States or the Organic Act for Puerto Rico. *St. Joseph Stock Yards Company v. United States*, 298 U.S. 38, 51; *Standard Oil Co. v. Marysville*, 279 U.S. 582; *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391.

The District Court ruled that "the provisions of Act No. 6 of June 30, 1936 as amended by Act No. 149 approved May 15, 1937, which restrict the use of certain trade marks and corporate names, discriminate arbitrarily against the plaintiff; violate the equal protection clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid."

It would seem that the equal protection clause appearing in the 14th Amendment of the Constitution of the United States limits the powers of the states and is inapplicable to Puerto Rico. But this is of no importance here because the Organic Act for Puerto Rico expressly provides that "no law shall be enacted in Puerto Rico which * * * shall deny to any person therein the equal protection of the laws." The statutory provision forbidding the shipping of rum in bulk, which applies to all shippers, need not be

considered in this connection. The above ruling relates only to the provisions prohibiting the use of certain trade marks and corporate names. As to this aspect of the case, the District Court said, "whether so intended or not the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination." We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time. We can not say without doubt upon the subject, that such a statute is unusual or capricious or unjustly discriminatory. In *Rapid Transit Corp. v. New York*, 303 U.S. 573, 578, it is said: "Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. * * * Indeed, it has long been the law under the 14th Amendment that 'a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it.'" See also *Borden v. Ten Eyck*, 297 U.S. 251; *United States v. Rock Royal Co-op. Inc.*, 307 U.S. ; 59 S.C. 993. Upon the principles heretofore stated and which must govern us in determining the constitutionality of an act of a legislature possessed of ample police powers, we cannot declare any of the statutory provisions here questioned repugnant to the equal protection clause of the Organic Act of Puerto Rico or if applicable the same clause appearing in the 14th Amendment to the Constitution of the United States.

We have refrained from stating many of the facts found by the District Court as to the quality of the appellee's product, the

amounts expended on its plant and equipment, whether before or after receiving the requisite permit for manufacturing liquor, or whether before or after notice of the legislation here questioned, because none of these considerations changes the result. The validity of these statutes can not be made to depend upon the appellee's expectation that in the exercise of its police powers a law making body may not change its policies or its laws. *Mahoney v. Triner Corp.*, 304 U.S. 401.

Nor have we deemed it necessary to state the facts pertinent thereto or to decide whether as urged on behalf of the appellants the plaintiff appellee is estopped to question the validity of the challenged statutes. We think the provisions of the Acts here assailed are valid.

The decree of the District Court is reversed, with costs on appeal to each appellant, and the case is remanded to that court with directions to dissolve the injunction and to dismiss the bill of complaint.

On the same date, to wit, January 12, 1940, the following Final Decree was entered in each case:

FINAL DECREE.

January 12, 1940.

This cause came on to be heard October 17, 1939, upon the transcript of record of the District Court of the United States for Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now, to wit, January 12, 1940, here ordered, adjudged and decreed as follows: The decree of the District Court is reversed, with costs on appeal to the appellant, and the case is remanded to that court with directions to dissolve the injunction and to dismiss the bill of complaint.

By the Court,

ARTHUR I. CHARRON, Clerk.

Thereafter, to wit, on January 18, 1940, mandate was stayed in each case until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certifying that the foregoing is a true copy of the transcript of record in the causes in said court heard and determined, numbered and entitled,

No. 8455.

RAFAEL SANCHO BONET, TREASURER,
DEFENDANT, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

No. 8456.

DESTILERIA SERRALLES, INC.,
INTERVENOR, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-third day of January, A. D. 1940.

[SEAL]

ARTHUR I. CHARRON, Clerk.

SUPREME COURT OF THE UNITED STATES
ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILE COPY

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FILED

FEB 29 1940

CHARLES ELMORE COOPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1939.

No. ~~70~~ 21

BACARDI CORPORATION OF AMERICA, *Petitioner*,

v.

RAFAEL SANCHO BONET, TREASURER, *Respondent*,

and

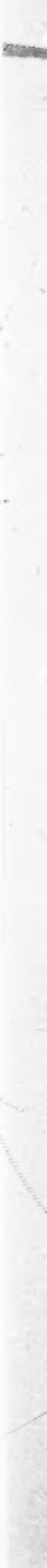
DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT, AND
BRIEF IN SUPPORT THEREOF.**

EDWARD S. ROGERS,
THOMAS HUNT,
JEROME L. ISAACS,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Attorneys for Petitioner.

February 29, 1940.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1939.

No.

BACARDI CORPORATION OF AMERICA, *Petitioner*,
v.
RAFAEL SANCHO BONET, TREASURER, *Respondent*,
and
DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT.**

Bacardi Corporation of America, petitioner, respectfully prays for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the First Circuit, entered January 12, 1940 (R. 443), reversing the decree of June 30, 1938, of the United States District Court for the District of Puerto

Rico which held invalid parts of the Spirits and Alcoholic Beverages Act of Puerto Rico (R. 116-117).

The case involves Sections 44 and 44b of the Beverages Act enacted June 30, 1936, as amended May 15, 1937.¹ Section 44 prohibits marking distilled spirits with any corporate or commercial name, trade-mark, brand or other designation which had previously been used anywhere outside of Puerto Rico, excepting those used by a manufacturer of spirits in Puerto Rico before February 1, 1936. Section 44b prohibits shipment of distilled spirits from Puerto Rico to the United States or other points in containers of more than one gallon capacity.

Petitioner contends that the purpose and result of the Acts in question is to prohibit it from using the well-known Bacardi name and trade-marks. This violates the Inter-American Trade Mark Convention² of 1929. It likewise conflicts with provisions of the Federal Alcohol Administration Act³ and regulations thereunder. As petitioner's competitors are not forbidden to use their marks, while petitioner is, equal protection⁴ is denied, and petitioner is deprived of its property without due process.⁴

STATEMENT.

Petitioner is a Pennsylvania corporation operating a distillery in Puerto Rico. On March 31, 1936, petitioner qualified to do business in Puerto Rico. It holds rectifier's and distiller's permits issued by Puerto Rico (R. 288, 315, 316). It holds basic permits issued by the

¹ The relevant portions of the Act are printed in Appendix A.

² Relevant portions of the Convention are printed in Appendix B.

³ Pertinent provisions of the Federal Alcohol Administration Act are printed as Appendix C.

⁴ These clauses of the Organic Act are printed in Appendix D.

Federal Alcohol Administration (R. 112, 271-273). It also holds a certificate of approval of labels issued by the Federal Alcohol Administration (R. 269, 275-277) which approves use of the following label:

CARTA DE PLATA

PUERTO RICAN RUM

Ron Superior

PREPARED & BOTTLED BY

BACARDI CORP.
OF AMERICA

SAN JUAN, P.R.

89 PROOF - 4/5 QUART



Produced in Puerto Rico by Special Authority and under the supervision of
COMPAGNIA RON BACARDI, S.A. CANTABRIAS, S.P.E. CUBA

SOLE DISTRIBUTORS IN U.S.A. SCHENLEY IMPORT CORP. NEW YORK, N.Y.

The sections of the Puerto Rican statute here under attack prohibit petitioner from using this label because it includes the Bacardi name and trade mark.

Respondent is the Treasurer of Puerto Rico, charged with the administration of the Puerto Rican statute. Intervenor-respondent is a corporation of Puerto Rico operating a distillery on the Island.

The statutes of June 30, 1936, and May 15, 1937, were enacted by the Puerto Rican legislature after petitioner had acquired from Compania Ron Bacardi, S. A., of Cuba, the right to use the Bacardi name and trade-marks, together with the secret processes under which Bacardi rum is manufactured, after petitioner had qualified to do business in Puerto Rico, and after it had leased buildings on the Island and equipped its distillery (R. 110-112). The statutes in question were aimed at petitioner and petitioner alone. They prevented the use of the Bacardi name and trade-marks on rum manufactured in Puerto Rico and thereby gave a competitive advantage to the three less celebrated rum distillers who were distilling before the arbitrary date of February 1, 1936 (R. 114). The limitation with respect to the size of the container is for the purpose of preventing petitioner from shipping rum in bulk to the United States and there applying its name and trade-mark (R. 440). Such limitation effectively prevents petitioner from competing for bulk business in the United States market (R. 114).

On July 31, 1937, petitioner filed its bill of complaint in the District Court of the United States for the District of Puerto Rico attacking Sections 44 and 44b of the Act as amended. A preliminary injunction was issued (R. 95) and upon final hearing, the District Court held the sections invalid and a permanent injunction was issued by final decree entered June 30, 1938 (R. 116-117). On appeal therefrom, the Circuit Court of Appeals for the First Circuit held the stat-

utes a valid exercise of the police power, reversed the decree of the District Court and directed dismissal of the complaint.

The statutes in question are not liquor control legislation as that term is commonly understood. They do not affect importation into Puerto Rico but exportation from Puerto Rico. They have nothing to do with quality, standards, or honest labeling. They have no relation to public health or morals. They are neither inspection statutes nor revenue measures (R. 114). They were directed at petitioner alone (R. 114). They affect no one else, except that the limitation on capacity of containers was stated in terms of general application.

Their purpose was to foster monopoly. They were passed at the instance of petitioner's competitors to handicap petitioner in the sale of its rum in the American market by forbidding the use of the highly esteemed Bacardi name and trade-marks which petitioner lawfully uses and which have an established good will. These statutes compel petitioner to operate, if it should operate at all in Puerto Rico, under an unknown alias. Petitioner is required to conceal its identity and the origin of its goods. It is compelled to leave behind its good reputation and abandon its good-will and trade-marks as the price of operating in Puerto Rico.

The trade-marks which petitioner here seeks to use were originally Cuban trade-marks. They were registered in the United States (R. 188-258) and in Puerto Rico (R. 258-268) in accordance with the Inter-American Convention. The Cuban owners granted to petitioner the right to use such marks in the United States including Puerto Rico on products made according to the formulas and manufacturing secrets and under the supervision of Cuban Bacardi (R. 290-307). This treaty expressly provides for such transfer of the use

and exploitation of trade-marks separately for each country (Art. 11, Appendix B). The treaty further provides that every mark duly registered in one of the contracting states shall be admitted to registration or deposit and legally protected in the other contracting states (Arts. 3 and 10). The convention also provides for the protection of commercial names (Art. 14). The Puerto Rican statutes here in question contravene this treaty under which commercial names and trade-marks of Cuban nationals are guaranteed protection in the United States. To prohibit their use for the benefit of competitors is not to protect them.

While petitioner is thus compelled to abandon its highly esteemed name and trade-marks, notwithstanding the protection guaranteed by formal treaty provisions, other Puerto Rican distillers, who are competitors of petitioner, are permitted to use names and marks which had originated or been used outside Puerto Rico and are permitted to ship rum bearing such names and marks to the Continental United States (R. 114). While these other names and brands perhaps have less public acceptance, they are to petitioner's competitors what the Bacardi name and trade marks are to petitioner.

To discriminate against petitioner and in favor of its competitors, the statute selects an arbitrary date, February 1, 1936. Before this date, the use of the names or marks must have begun in Puerto Rico, regardless of their currency elsewhere. The date selected exempts from the name and label prohibitions all of petitioner's competitors; it causes such prohibitions to apply to petitioner alone, a result plainly intended. The statute as enacted June 30, 1936, also prohibited one of petitioner's competitors, Carioca, from using its name and marks, but by section 7 of the amending act of May 15, 1937, the exemption was extended to marks which had been used only in the United States but not

elsewhere, and Carioca was thereby given the privileges denied petitioner.

Petitioner is thus compelled to assume anonymity to reward the less respected. By taking petitioner's good will away from it and compelling it to conduct its business and sell its goods without the benefit of its previously established reputation, the statute in effect confers an unearned benefit on petitioner's less esteemed competitors and gives them an unfair competitive advantage, at the same time depriving the public of information it is entitled to have—facts as to the origin of the goods offered for sale—so that an intelligent choice can be made.*

The statute thus creates an arbitrary discrimination against petitioner and denies it the equal protection of the law guaranteed by the Organic Act and by the Fourteenth Amendment to the Constitution of the United States to the extent that the Fourteenth Amendment may apply to the territory of Puerto Rico.

Sections 44 and 44b also impose burdens and restrictions upon commerce between Puerto Rico and the United States and conflict with the provisions of the Federal Alcohol Administration Act.

These provisions of the statute likewise amount to a taking of petitioner's property without due process of law and are in contravention of the guarantees of the Organic Act and of the Fifth Amendment to the Constitution of the United States to the extent that the Fifth Amendment may apply to Puerto Rico.

*In *Federal Trade Commission v. Algoma Lumber Company*, 291 U. S. 67, 78, Mr. Justice Cardozo said:

"In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance."

REASONS FOR GRANTING THE WRIT.

1. Desirability of Construction of Trade Mark Convention. The Inter-American Trade Mark Convention and Protocol of February 20, 1929 (46 Stat. 2907) has never been judicially interpreted. A construction of it by this Court is of great public and international concern. Such legislation as the Puerto Rican statute invites reprisals which would seriously affect our foreign trade and imperil relations with the other American Republics.

This Court has often held that trade-marks are creatures of the common law; *i.e.*, the law of the States (*Trade Mark Cases*, 100 U. S. 82) and that the Federal Trade Mark Statutes do not give substantive rights in trade-marks registered under them (*American Trading Co. v. Heacock*, 285 U. S. 247). But it is by no means clear that foreigners have not been given substantive rights in their trade-marks under international conventions. The power of the National Government in this respect is complete and the local law is subordinate. This case presents the question whether substantive rights in trade-marks can be thus created by treaty.

Also, it is important to determine if industrial property conventions are self-executing when they are complete in themselves as this one is. Two views are held on the question. Secretary Bayard, on January 18, 1889, informed the British Government that such conventions are self-executing; Attorney General Miller thought otherwise on April 5, 1889, and said they needed legislation to make them effective (*Moore Digest of International Law*, II, pp. 42, 44). If they are self-executing then such treaties supersede any Act of Congress inconsistent with them (*U. S. v. Lee Yen Tai*, 185 U. S. 213, 221), and under the terms of the Constitution (Article VI) treaties are the supreme

law of the land, anything in the laws of any state or territory to the contrary notwithstanding.

The treaty guarantees to the nationals of Cuba protection in their trade-marks in the United States, and authorizes their use and exploitation here. It also protects trade and commercial names. A statute which forbids their use, contravenes the treaty. This prohibition does not apply to other foreign marks, some of which may not even be protected by similar treaties. When the prohibition is not for reasons of public health or morality, but to give competitive advantage to American nationals whose names and marks are not so highly regarded, it is not only void but discreditable. The treaty, we submit, being the supreme law of the land, is paramount.

A decision by this Court upon these questions arising under the Inter-American Trade Mark Convention is of international concern as well as of great public importance to our own citizens.

2. *Importance of Decision on Equal Protection Clause of the Organic Act of Puerto Rico.* The Puerto Rican statute prohibits petitioner from using names or trade marks previously used outside the Island, but gives that privilege to other persons engaged in the same business if use in Puerto Rico began before February 1, 1936. The decision of the Court of Appeals holds that such discrimination is not forbidden by the equal protection clause. This Court has held that a similar New York statute denied equal protection in withholding or granting privileges to milk dealers based on the date of beginning business. *Mayflower Farms, Inc. v. Ten Eyck*, 297 U. S. 266. There, as here, the challenged statute was "not a regulation of business in the interest of, or for the protection of, the public, but an attempt to give an economic advantage to those engaged in a given business at an arbit-

trary date as against all those who enter the industry after that date."

The equal protection clause as applied to Puerto Rico (whether by the Organic Act or by the Constitution) should mean the same thing as it does when applied to a State. The decision of the Circuit Court of Appeals herein makes it doubtful if this is so. The conflict in the above decisions cannot be reconciled on the ground that one relates to the milk business and the other to the distilling business. The question here is one of the equal protection of those engaged in the same business.

The equal protection clause, as applied to the territory of Puerto Rico, has not been construed by this Court. The degree of protection that may be expected from this clause is of vital public interest to all who are or may be engaged in commerce with Puerto Rico or in any kind of business within the Island. A decision by this Court on the subject is important to the economic development of Puerto Rico and for the guidance of all persons in deciding whether to enter or continue business in or with the Island.

3. Necessity of Resolving Conflict With Federal Alcohol Administration Act and Regulations. Another question of public importance presented by this case is the extent to which Puerto Rican legislation can limit the operation of the Federal Alcohol Administration Act and the regulations issued thereunder. The Puerto Rican statutes do not affect importation into the Island. By the definitions of the Alcohol Administration Act, which was passed on August 29, 1935, prior to the Puerto Rican statutes here considered, Congress plainly undertook to regulate the entire field of commerce in alcoholic beverages, with the territories of Puerto Rico, Alaska and Hawaii, as well as among the several states and with foreign nations. There can be no doubt of its power to do so.

The restrictions imposed by the Puerto Rican statutes are in conflict with the regulations issued by the Federal Alcohol Administration. Under the Federal Alcohol Administration Act and its regulations, labels using the corporate name and trade-marks of petitioner have been approved and the shipment of rum in bulk from Puerto Rico authorized. The right to do these things, granted by the Federal authority, is denied by Puerto Rico.

The Federal Alcohol Administration Act and the regulations issued thereunder clearly contemplate a complete system of regulation over all commerce in alcoholic beverages whenever such commerce passes outside the confines of a single state or territory. The sole exception is that embodied in the Twenty-first Amendment to the Constitution of the United States which is limited to alcoholic liquor entering into a state or territory *for delivery or use therein*. The regulation of interstate commerce thus undertaken by Federal authority can not succeed if it is to be altered and amended at will by the forty-eight states and the territories.

The regulations imposed by the Puerto Rican statutes here involved appear to be such as would be held beyond the power of a state under the decisions of this Court with respect to interstate commerce. The decision of the Circuit Court of Appeals suggests that a territorial legislature has power to legislate concerning commerce between the United States and the territory in a manner beyond the power of any state to legislate concerning interstate commerce. On this question of territorial power we are unable to find any decision by this Court. This question, as well as the question what regulation controls when local authority conflicts with the Federal Alcohol Administration, ought to be decided by this Court. Commerce with the territories cannot flourish if attended by such uncertainties as are

created by the Puerto Rican legislation and the decision of the Circuit Court of Appeals upholding it.

4. Petitioner Should be Protected Against Being Deprived of Its Property Without Due Process of Law. Trade-marks and commercial names are property rights and are jealously protected as a sound public policy, both to encourage excellence and to protect purchasers from imposition. The Act takes away from petitioner the benefit of its good reputation and the opportunity of the public to rely upon it, by forbidding petitioner to use the Bacardi name and trade-marks. This deprives it of its property without due process.

The statute in question is the sort of expropriation of good will and trade-marks which was before this Court in *Baglin v. Cusenier*, 221 U. S. 580, and before the House of Lords in *Lecouturier v. Rey* (1910) A. C. 265, where the French Government attempted to appropriate the Chartreuse trade-marks. Here the Legislature of Puerto Rico has not appropriated the Bacardi trade-marks but has sought to destroy them.

Respectfully submitted,

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Attorneys for Petitioner.

February 29, 1940.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1939.

No.

BACARDI CORPORATION OF AMERICA, *Petitioner*,

v.

RAFAEL SANCHO BONET, TREASURER, *Respondent*,
and

DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

I

THE OPINIONS BELOW.

The opinion of the District Court for the District of Puerto Rico, filed May 9, 1938, is at R. 95-116. The opinion of the Circuit Court of Appeals for the First Circuit is not yet reported and is at R. 429. It was filed January 12, 1940 (R. 443).

II

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1935 (28 U. S. C. Sec. 347).

III.

STATEMENT OF THE CASE.

The case is stated in the foregoing petition for writ of certiorari at p. 2. The following findings made by the District Court succinctly state the facts. They were not modified by the Circuit Court of Appeals (R. 110-114) :

“7. For more than twenty years, except for the period during national prohibition, Compania Ron Bacardi, S. A. and its predecessors have sold alcoholic liquors, principally rum, in Puerto Rico and elsewhere throughout the United States under trademarks including the word ‘Bacardi’, ‘Bacardi y Cia.’, the representation of a bat in a circular frame, and certain distinctive labels. These trademarks were duly registered in the United States Patent Office and in the Office of the Executive Secretary of Puerto Rico prior to the passage of the laws complained of in this suit.

“10. On June 8, 1934, plaintiff, Bacardi Corporation of America, entered into a written agreement with Compania Ron Bacardi, S. A., by the terms of which the Cuban company authorized the plaintiff to manufacture and sell rum in certain localities and to use the trademarks and labels (commonly known as the Bacardi trademarks and labels) belonging to the Cuban company and set forth in 7 above in connection with such manufacture and sale. On December 19, 1935, Bacardi Corporation of America entered into a supplementary agreement with Compania Ron Bacardi, S. A., extending the territory covered by the contract of June 8, 1934 to include Puerto Rico. The contract of June 8, 1934 provides that all rum manufactured and offered for sale by the plaintiff, Bacardi Corporation of America, to which the said trademarks and labels are attached, is to be manufactured under the supervision of Compania Ron Bacardi, S. A., and is to be the same rum that

the Cuban company manufactures and sells under the said trademarks and labels.

"11. That the contract between the Cuban company and the plaintiff company was formally ratified by the two companies, but even before the formal ratification, the use of the labels and trademarks by the plaintiff was assented to by the Cuban company which actually participated in the use of said labels by plaintiff.

"12. Bacardi rum is and always has been made according to definite processes and methods. It has been extensively advertised and it enjoys an excellent reputation. In accordance with the contract of June 8, 1934, the secret processes and methods under which Bacardi rum is made have been made available to the plaintiff. Plaintiff, in order to comply with the contract of June 8, 1934 by producing rum in Puerto Rico of the identical quality of that produced in Cuba by Compania Ron Bacardi, S. A., has used the secret processes and methods of Cuban Bacardi and brought to Puerto Rico from Cuba experts and technicians who have supervised the manufacture of rum for the plaintiff in Puerto Rico. The rum so manufactured in Puerto Rico by the plaintiff is made according to the secret methods and processes made available to plaintiff under the aforesaid contract and is the same product heretofore sold in the United States and Puerto Rico under the trademarks set forth in paragraph 7 of these findings.

"13. In March, 1936, plaintiff made arrangements for the installation in Puerto Rico of a plant for the conduct of its business. It leased a building at a yearly rental of Ninety-six Hundred Dollars (\$9,600) and expended about Forty-five Thousand Dollars (\$45,000) for the installation of its plant. Up to the present time plaintiff's total investment in the said plant and manufactured

product exceeds the sum of Six Hundred Thousand Dollars (\$600,000).

"14. The right to use the Bacardi trade-marks and labels conferred on plaintiff under the contract of June 8, 1934 is a valuable property right. These trade-marks and labels symbolize a valuable good will and are of great value to the plaintiff in marketing its commodity.

"18. Plaintiff has in stock in Puerto Rico about three hundred fifty thousand (350,000) gallons of rum and is ready to bottle and ship that rum to the United States in quantities of approximately ten thousand (10,000) cases per month.

"20. Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trademarks, although there are at least three other companies now operating in Puerto Rico who use on their products trademarks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico.

"21. If plaintiff is prohibited from using the trademarks and labels herein referred to it will suffer irreparable damage.

"23. That the requirement that shipments of rum be made in containers of not more than one gallon is to deny the right to export rum in bulk, as the cost of such shipments would exceed the value of the commodity.

"24. There is no law in force at the present time in Puerto Rico fixing any standard of quality or providing for any inspection of rum manufactured or to be manufactured within Puerto Rico.

"25. The exportation and sale of alcoholic liquors manufactured in Puerto Rico, in Continental United States or elsewhere, will in no way deplete the revenues of Puerto Rico.

"26. That if the plaintiff is not permitted to use its corporate name its business will be greatly damaged and it will suffer great and irreparable loss."

IV.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In failing to hold Sections 44 and 44 (b) of the Spirits and Alcoholic Beverages Act of Puerto Rico, as amended, invalid as applied to petitioner because these sections attempt to destroy substantive rights in trade-marks guaranteed to petitioner by the 1929 Inter-American Convention and Protocol for Trade Mark and Commercial Protection.

2. In failing to hold said sections of the Puerto Rican Beverages Act invalid as applied to petitioner because in conflict with the Federal Alcohol Administration Act, and regulations thereunder, insofar as they seek to limit petitioner's right to market its products under its own name, trade-marks, trade names and brands, as approved by the Federal Alcohol Administration, and to ship said products in bulk to the United States, as permitted by the Federal Alcohol Administration.

3. In failing to hold that the Congress of the United States has acted in ratifying said 1929 Inter-American Convention and Protocol for Trade Mark and Commercial Protection and in adopting said Federal Alcohol Administration Act, and has pre-empted the respective fields covered by said Convention and said Act, and that substantive rights obtained by petitioner thereunder may not constitutionally be abridged by the legislature of Puerto Rico.

4. In failing to hold that said sections of the Puerto Rican Beverages Act are in conflict with the equal protection and due process clauses of the Organic Act of Puerto Rico, or of the Fifth and Fourteenth Amend-

ments to the Constitution of the United States, and that said Beverages Act denies petitioner equal protection of the laws and requires the destruction of its property without due process of law.

5. In failing to hold that the said sections of the Puerto Rican Beverages Act violate the Commerce Clause.

6. In holding that said sections of the Puerto Rican Beverages Act constitute a valid exercise of the police power.

v.

ARGUMENT.

**The Puerto Rican Statute Is In Conflict With Treaty Provisions
And Therefore Invalid.**

Petitioner acquired from the Cuban company the right to use and exploit certain of its trade-marks, including the Bacardi name, in the United States and Puerto Rico. These marks had been registered in the United States in accordance with the Inter-American Trade Mark Convention. Petitioner's acquisition of the right to use them was in accordance with Article 11 of that Convention.*

Section 44 of the Puerto Rican statute, as amended, prohibits petitioner from using any of these trade-marks which it has thus acquired and which have been registered in the United States pursuant to the treaty. The statute thus conflicts with the treaty.

The treaty says that because the marks have been used and registered in Cuba they shall be entitled to registration and protection in the United States. The Puerto Rican statute says that because the marks have been used in Cuba, they shall not be used in Puerto Rico or on shipments from Puerto Rico to the United States or to foreign countries. The very circumstance which brings the mark within the terms of the treaty, namely

*See Appendix B for extracts from the Convention.

its use in Cuba, causes the prohibition of the Puerto Rican statute to operate upon it.

Treaties made under the authority of the United States are the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding. (Article VI, Clause 2 of the Constitution.)

The law of any state or territory, such as the Puerto Rican statute, which conflicts with a valid treaty executed by the United States must yield to that treaty. *Santovincenzo v. Egan*, 284 U. S. 30; *Asakura v. Seattle*, 265 U. S. 332.

**Petitioner Has Been Denied the Equal Protection Of The Laws
Guaranteed By The Organic Act of Puerto Rico.**

The equal protection clause of the Organic Act of Puerto Rico* has not been construed by this Court. This petitioner and others engaged in commerce on the Island do not have an authoritative interpretation which will throw light upon the power of the local legislature to adopt standards having every appearance of an exercise of arbitrary power for the benefit of a few private individuals or corporations.

The Puerto Rican statute purports to legislate with respect to distillers, a permissible classification. But it goes farther and so separates the class that a dividing line is drawn, marked by a mere date, and sub-classifications created. Petitioner is placed in one of these sub-classifications and all other Puerto Rican distillers occupy the other. The statute withdraws from petitioner alone the fruits of successful operation under a famous name and under trade-marks having an established reputation. There can be no doubt from the findings of the District Court that petitioner's right to expect a recurring trade in "Bacardi" rum was deliberately suppressed by the legislature. There can be no

*Quoted in Appendix D.

doubt that petitioner's competitors, marketing less famous products, are the sole beneficiaries of this legislation. An interesting and important question of equal protection of the laws is raised and should be decided by this Court, where all those engaged in a similar business are accorded equal treatment in manufacturing, but one of them, the petitioner, is forbidden to market its product except under an assumed name.

Because of the substantial similarity in the wording of the equal protection clauses in the Organic Act and in the 14th Amendment to the Constitution, recourse may be had to cases decided under the latter clause, whether or not directly applicable to the territory of Puerto Rico. An examination of such cases indicates the probability of a conflict between the decisions of this court and the decision of the Circuit Court of Appeals in the instant case.

This Court has expressly held unconstitutional a purported classification under the New York Milk Control Act which was based upon a line drawn between those similarly situated who were in business before and after a particular date. The classification there attacked bore no relation to the public health or general welfare, but operated to give an economic advantage to the class of persons, arbitrarily selected, as against others in the same line of business and equally worthy. *Mayflower Farms, Inc. v. Ten Eyck*, 297 U. S. 266.

This Court has likewise condemned an attempt by a state to oppress a single business, properly domiciled within the state, for the supposed benefit of others of its citizens, by the imposition of penalties based upon an arbitrary classification. *McFarland v. American Sugar Refining Company*, 241 U. S. 79. The statute stricken down in the McFarland case would, if unchecked, have destroyed a valuable business by a wanton disregard of private rights. The Puerto Rican

statute in this case will have the same effect upon petitioner's business in that territory and the Continental United States if its operation is not permanently enjoined.

It may be assumed that a legislature, state or territorial, is permitted to experiment within a relatively wide field and to apply its laws through the medium of reasonable classifications. But classification is discrimination, and discriminations cannot stand as reasonable if they offend the plain standards of common sense. *Hartford Steam Boiler Inspection & Insurance Co. v. Harrison*, 301 U. S. 459, 462. To say the least, the classification adopted in the instant case is so unusual as to require the closest scrutiny. This Court has said that unusual discriminations suggest careful consideration to determine whether they are obnoxious to the constitutional provision of equal protection. *Louisville Gas & Electric Co. v. Coleman*, 277 U. S. 32, 37, 38.

Where the statute of a territory not only threatens to destroy valuable private rights of one person, but preserves the same rights for others, similarly situated, it interferes with free and fair competition in business and is repugnant to every concept of equal protection. A statute cannot be supported upon the basis of reasonable classification where, by its very terms, it appears highly unreasonable and prejudicial. This statute certainly presents a case under the equal protection clause of which this court should take jurisdiction.

The Puerto Rican Statute Conflicts with the Federal Alcohol Administration Act and is Invalid.

The Federal Alcohol Administration Act*, approved August 29, 1935, announced the intention of the Congress to regulate the entire traffic in alcoholic

*Pertinent provisions of the Federal Alcohol Administration Act are printed in Appendix C.

beverages between the states, including Puerto Rico, subject to the limitations of the 21st Amendment not here involved.

Section 17(a) of this Act defines the "United States" to mean "the several States and Territories"; the term "State" to include "a Territory" and the term "Territory" to mean "Puerto Rico" (and others). Subsection (3) defines "interstate commerce" as "commerce between any state (including the Territory of Puerto Rico as above) and any place outside thereof" (parenthesis ours).

Except for basic permittees, it is unlawful under Section 3(b) to distill or ship spirits in interstate commerce as above defined.

Under Section 5(e) it is unlawful to remove from customs custody or ship spirits in interstate commerce, except under labels approved by the Administrator. This is to furnish customers with adequate information as to the identity, quality and manufacturer of the product and to prevent deception.

There is no prohibition in the Act against sale or shipment of bulk spirits in containers larger than one gallon capacity except, under section 6, when the sale or shipment is to a person not licensed to receive them. Petitioner is permitted, by the Act and its regulations, to ship and sell rum in bulk to duly licensed importers in the United States.

Pursuant to this Act, Petitioner is expressly authorized by the Federal Alcohol Administration to manufacture rum in Puerto Rico (Rectifiers Basic Permit No. R-452; R. 271) and to warehouse, bottle, sell and ship the rum there distilled to the mainland (Warehousing and Bottling Basic Permit No. BR-542; R. 272) under labels bearing the Bacardi name and trademark which were used outside of Puerto Rico prior to February 1, 1936, as approved by the Administrator (Certificates of Approval of Labels of Domestically

Bottled Distilled Spirits; R. 269-271; 275-277). These certificates are all in full force and effect and have never been revoked.

The first two permits authorize petitioner to sell and ship rum in interstate commerce (as defined in the Act to include Puerto Rico). The certificates of approval of labels authorize petitioner to ship under the label set out on page 3 of the Petition.

Petitioner's permits do not limit the quantity which may be shipped. It has never been contended that petitioner has made bulk shipments to unlicensed persons within the prohibition of Section 6. Petitioner therefore has the right to ship its rum from Puerto Rico to continental United States in any sized containers.

After petitioner received federal authority to distill and bottle its rum in Puerto Rico and to ship it to the mainland under approved labels bearing its corporate name and trade-marks, the Puerto Rican legislature, by the statutes under attack, has prohibited petitioner from doing what the Federal Alcohol Administration authorized by Act of Congress has expressly sanctioned. Congress having entered the field and having covered it completely, the nullifying territorial legislation must fall. *El Paso & N. E. Ry. v. Gutierrez*, 215 U. S. 87. Mr. Justice Day, delivering the opinion of the Court, said (p. 93) :

"In view of the plenary power of Congress under the Constitution over the territories of the United States * * * there can be no doubt that an act of Congress undertaking to regulate commerce in the District of Columbia and the Territories of the United States would necessarily supersede the territorial law regulating the same subject."

It will suffice to mention only one illustration of the conflict which exists between the federal and territorial regulations. Section 5(c) of the Federal Alcohol

Administration Act requires that distilled spirits be labelled in conformity with regulations prescribed by the Administrator to provide the consumer with adequate information as to the manufacturer or bottler of the product. The regulations require (Sec. 53; R. 333) that the label show the name of the distiller or rectifier and the place where prepared. Thus the federal regulations *require* petitioner's use of its name upon its label. The Puerto Rican statute *prohibits* petitioner's use of its name upon its label. If petitioner labels as the federal regulation commands, the Puerto Rican statute says it cannot ship. If petitioner labels as the Puerto Rican statute commands, the federal regulation says it cannot ship. There is a head on collision.*

CONCLUSION.

The statutes here in question deprive petitioner of its name and trade-marks not only in Puerto Rico but throughout the country. They forbid the use of them on rum produced in Puerto Rico and shipped out. To prevent the sale of Bacardi rum under the Bacardi name and marks everywhere in the United States—indeed anywhere—is to give extra territoriality to a Puerto Rican penal statute. Moreover, it takes away from the remainder of the country and the Federal government the right to prescribe for themselves and within their jurisdiction the labeling for spirits originating in Puerto Rico and this is effected merely because the Puerto Rican legislature can get at the source. Petitioner's marks are lawful everywhere but there. The Puerto Rican legislature is in effect legislating for the whole United States by forbidding the use of trade-marks which, in the remainder of the country, are desired by the public and acceptable to the law.

*No such conflict between mandatory requirements of the federal and local statutes existed in Ziffrin v. Reeves, 308 U. S. 132, or in Puerto Rico v. Shell Company, 302 U. S. 253.

In *Baglin v. Cusenier*, 221 U. S. 580 this Court held that the act of the French Government in expropriating the French Chartreuse trade-marks did not affect the monks' right to them in the United States because the confiscation could not extend beyond the limits of France. The House of Lords came to the same conclusion as to England (*Leconturier v. Rey* (1910) A. C. 265).

This Puerto Rican legislation takes petitioner's trade-marks away from it not only in Puerto Rico but throughout the country—because it forbids their use on shipments from the Island to any place outside. This is not the same as forbidding entry *into* the Island of goods under proscribed marks. It is the prohibition of shipments *out* of the Island under marks which are lawful both in the commerce affected and at the destination of the goods.

Respectfully submitted,

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February 29, 1940.

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APPENDIX A**SPIRITS AND ALCOHOLIC BEVERAGE ACT OF PUERTO RICO.**

(Act No. 6 approved June 30, 1936 as amended by
Act No. 149 approved May 15, 1937)

Sec. 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (1/8) of an inch high, said phrase to be not less than one and one-half (1-1/2) inches long. On the label of every alcoholic beverage shall also appear the word *distilled*, *rectified*, or *blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose: *Provided, further*, That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears.

Sec. 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other des-

ignation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936.

Section 44 above was further amended by Section 7 of the Act of May 15, 1937 reading as follows:

Sec. 7.—In regard to trade marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.

Sec. 44 (b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; * * *.

APPENDIX B.

GENERAL INTER-AMERICAN CONVENTION FOR TRADE MARK
AND COMMERCIAL PROTECTION.

(46 Stat. 2907)

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan-American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Havana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan-American Union at Washington,

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks" signed at Buenos Aires on August 20, 1910, with a view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indications of geographical origin, and for this purpose have appointed as their respective delegates, * * *

Chapter II

TRADE MARK PROTECTION.

Article 3.

Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

* * *

Article 10.

The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

Article 11.

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

Chapter III.

PROTECTION OF COMMERCIAL NAMES.

Article 14.

Trade names or commercial names of persons entitled to the benefit of this Convention shall be protected in all the Contracting States. Such protection shall be enjoyed without necessity of deposit or registration, whether or not the name forms a part of a trade-mark.

APPENDIX C.

FEDERAL ALCOHOL ADMINISTRATION ACT.

49 Stat. 977.

(U. S. Code Title 27, Chapter 8, Secs. 201-212)

Sec. 3. Unlawful Businesses Without Permit.—In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

* * * * *

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

* * * * *

Sec. 4. Permits.—

* * * * *

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

Sec. 5. Unfair Competition and Unlawful Practices.—

It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

* * * * *

(e) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container * * * * .

Sec. 17. (a) As used in this Act—

* * * * *

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

* * * * *

NOTE: The regulations issued by the Federal Alcohol Administration pursuant to this Act are contained in the Record, pp. 319-376. The labeling requirements of the regulations are in Sections 30-41 (R. 329-347).

APPENDIX D.

ORGANIC ACT OF PUERTO RICO.

39 Stat. 951, 961.

(U. S. Code, Title 48, Sec. 737).

Bill of Rights and Restrictions. No law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property, without due process of law, or deny to any person therein the equal protection of the laws.

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CHARLES ELMORE SHIPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1939.

No. [REDACTED] 21

BACARDI CORPORATION OF AMERICA, *Petitioner*,
v.
RAFAEL SANCHO BONET, TREASURER, *Respondent*,
and
DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

REPLY BRIEF.

EDWARD S. ROGERS,
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JEROME L. ISAACS,
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April 17, 1940.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1939.

No. 774.

BACARDI CORPORATION OF AMERICA, *Petitioner*,
v.
RAFAEL SANCHO BONET, TREASURER, *Respondent*,
and
DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

REPLY BRIEF.

Petition for certiorari was filed on February 29, 1940, within the time specified in the order of the Circuit Court of Appeals staying the mandate. Two briefs in opposition have been filed—one on behalf of respondent, Rafael Sancho Bonet, the Treasurer of Puerto Rico, which was served on petitioner April 11, 1940, and one on behalf of intervenor, Destileria Serralles, Inc., which was served on petitioner April 8, 1940.

Both briefs undertake to argue the merits at considerable length. They contain substantially the same material as the briefs in chief of the same parties in the Circuit Court of Appeals. Little or no mention is made of the public importance of the questions presented. This as we understand the rules is the matter the Court desires to be discussed in the petition and briefs. We endeavored to conform to this requirement.

Our adversaries have not. This reply will discuss briefly the principal arguments of the opposition briefs upon the three main points of the case: the treaty, the Federal Alcohol Act and equal protection.

THE CONFLICT WITH THE INTER-AMERICAN TRADE-MARK CONVENTION.

Intervenor's brief (pp. 10-11, 18-19) argues that no question can arise under the Inter-American Trade-Mark Convention because there are no foreigners involved in the case. The brief for respondent (pp. 41-42), on the other hand, argues that petitioner should be considered as the Cuban Bacardi Company and treated as an alien. Whichever view may be correct, it is obvious (1) that an American citizen is as much entitled to the protection of the treaty as a foreigner, and (2) that the right which petitioner is seeking to protect is the right conferred by the treaty to use a foreign trade-mark. Petitioner derived this right from a Cuban national.

Article 11 of the Convention (p. 30 of Petition) states in part as follows:

“The use and *exploitation* of trade-marks may be transferred separately for each country, * * * ”

By the use of the word “*exploitation*”, the Convention signatories intended to require that each country permit the free use of lawfully acquired trade-marks in the course of lawful trade.

Article 3 of the Convention provides that trademarks duly registered in one of the contracting states *shall be legally protected in the other contracting states*. Can it be said that the denial of the right to use a trade-mark amounts to legal protection? It must be assumed that commitments under treaties are entered into in good faith.

The very circumstance (use in Cuba) which brings the Bacardi name and trade-marks within the protection of the treaty is made the occasion for their proscription by the statute. Thus there is a direct conflict between the treaty and the statute.

It is a well-recognized rule that treaties are to be liberally construed (*Nielsen v. Johnson*, 279 U. S. 47).^{*} A construction that treaty negotiators intended to permit the destruction of the very rights they sought to protect would be a departure from the liberal attitude announced in *Nielsen v. Johnson*.

It is equally well recognized that restrictive or penal statutes like this Puerto Rican legislation should be strictly construed.

Whether petitioner is regarded as an American citizen or as a Cuban alien the case calls for a construction of the treaty. There was no necessity for assignment of cross error on the appeal from the District Court to the Circuit Court of Appeals, as suggested by respondent's brief (p. 35). Errors can be assigned only to the decree of the court, which in this case was entirely favorable to petitioner; cross errors are not assignable to the reasons or opinions for such a decree.

Respondent and intervenor admit that there has been no case construing the Convention. This we submit,

*In that case, Mr. Justice Stone said (at p. 52) :

"When a treaty provision fairly admits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred * * *, and as the treaty-making power is independent of and superior to the legislative power of the states, the meaning of treaty provisions so construed is not restricted by any necessity of avoiding possible conflict with state legislation, and when so ascertained must prevail over inconsistent state enactments."

shows the need of such a construction. It is necessary at this time only to decide if the question is important enough to be considered by this Court. We, therefore, did not discuss the merits and will not reply in detail to the argument in our adversaries' briefs. (Respondent's brief pp. 8-9, 35-36; intervenor's brief pp. 18-23).

Neither respondent nor intervenor denies that a decision of this Court setting forth the limits of the treaty is of paramount importance. The importance of the question and the international interests involved are such that this Court should consider and decide the matter.

THE CONFLICT WITH THE FEDERAL ALCOHOL ADMINISTRATION ACT.

Brief for respondent (pp. 9-10) contends that the Puerto Rican statute requires the use of petitioner's name on its labels. But section 44 forbids use on a label of any commercial or corporate name which "has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico." Literally construed, this prohibits use of the word "Corporation" and "America," as well as "Bacardi" as part of petitioner's corporate name, since all of these words have been used outside the Island.

The Federal Alcohol Administration Act requires petitioner to display its corporate name on its labels; the Puerto Rican Statute, as we read it, prohibits this.

Here again the question is not now upon the merits of this controversy but whether the importance of the question is such as to require this Court to decide it.

Respondent's brief (pp. 28-35) and intervenor's brief (pp. 23-28) deal with the merits of the

question and with the applicability of the commerce clause to Puerto Rico. The latter point is immaterial since Congress has legislated with respect to commerce in alcoholic liquors from Puerto Rico to the United States as well as within the Island itself. Therefore, the power of the territorial legislature to impose additional or conflicting requirements is less, rather than more, than that of a state legislature. By the Federal Alcohol Act of 1935, Congress has established a complete program for regulating the shipment and labeling of alcoholic liquors, applicable within Puerto Rico as well as on shipments from Puerto Rico to the mainland. The Puerto Rican legislature has no authority whatever to prescribe different or additional restrictions upon such shipping or labeling. The reservation of the Twenty-first Amendment pertains only to shipments into a state or territory from outside, a matter with which the present case is not concerned.

Thus the question presented is a conflict between federal and territorial authority, and is of general interest and national importance. It has not previously been decided. *Ziffrin v. Reeves*, 308 U. S. 132, does not refer to the question presented here. No conflict existed between the state and federal regulation. The case related to the power of a state and not of a territory.

The Federal Alcohol Administration Act expressly makes its regulations applicable within Puerto Rico. Therefore, the Federal Alcohol Administration Act establishes a complete regulation for shipments and labeling of alcoholic liquors manufactured in Puerto Rico and transported from there to the continental United States; the territorial legislature has no power to amend or supersede the Act of Congress. We submit that this question of conflict between the Federal Act and

the Puerto Rican statute ought to be decided by this Court.

THE CONFLICT WITH THE EQUAL PROTECTION CLAUSE.

Respondent's brief (pp. 2-3, 13-14, 38-53) and intervenor's brief (pp. 3-4, 12-14) attempt to justify the classification based on use prior to February 1, 1936, as the exemption of a class already established and in

We think the Court's attention should be called to a variation of translation of section 7 of the Act of May 15, 1937. The section should read as follows:

Sec. 7.—In regard to trade marks *only*, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable to such trademarks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trademarks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date. (*Italics ours*)

In the English translation as it appears in the certified copy of the Laws of Puerto Rico, First Regular Session of the 14th Legislature of Puerto Rico, February 8-April 15, 1937, the word "only" (italicsed in the above quotation) follows the words "shall be applicable". Examination of the Spanish version, however, which is governing, shows that the word "only" should follow the opening phrase as in the quotation above.

The section was incorrectly quoted in the Appendix (p. 28) to petition for certiorari and is incorrectly quoted in the opinion of the Circuit Court of Appeals and at pp. 19 and 68 of respondent's brief, and at p. 37 of intervenor's brief. It is correctly quoted at p. 8 of intervenor's brief.

operation before the restrictive statute was enacted. They state that the first temporary act was enacted May 15, 1936, and that petitioner did not acquire its permit from Puerto Rico until July 20, 1936. They recognize, however, that petitioner qualified to do business in Puerto Rico, receiving a certificate of registration as a foreign corporation on March 31, 1936, and a license on April 6, 1936. They also recognize that petitioner's federal permit under which it operated in Pennsylvania was amended on March 28, 1936, to authorize operation in Puerto Rico, that a building was leased and that some \$45,000 had been expended between April 6 and May 15, 1936, when the restrictive statute was first enacted.

Respondent admits (p. 37) that a substantial question is presented under the equal protection clause, but attempts to overcome these facts by contending (pp. 2-3, 13-14) that, because of certain provisions in the Organic Act for Puerto Rico the bill which became the law of May 15, 1936, must have been introduced in the legislature on or before March 21, 1936. The mere introduction of a bill can not be given the same effect as its enactment. It can not be assumed that the legislator introducing a bill controls the vote of the entire legislature. The record shows that the petitioner's vice-president, Mr. Bosch, arrived in Puerto Rico on February 22, 1936, that he concluded to establish a plant in Puerto Rico, and that arrangements for lease of the building had been completed some time before March 21, 1936 (Finding 13, R. 111-12; R. 140, 305-7). So, while petitioner was not actually in operation when the bill was introduced, it was established in the sense that the decision had been made to operate in Puerto Rico, steps to that end had been taken, obligations had been incurred, and commitments had been made. Doubtless

petitioner's activities prompted the introduction of the bill. By the time the statute was enacted, petitioner was established and in operation and had made a substantial investment.

Therefore, the classification adopted by the Puerto Rican legislature, with February 1, 1936, as the determinative date, was not equivalent to a classification of before and after the passage of the statute. What the legislature really did was to establish three arbitrary classes:

1. Manufacturers established in Puerto Rico prior to February 1, 1936;
2. Those established in Puerto Rico after February 1, 1936, but prior to enactment of the statute of May 15, 1936;
3. Those who might become established after the enactment of the statute.

Members of class 1 are permitted to use their trademarks and names whether foreign or domestic. Members of classes 2 and 3 are not permitted to use foreign marks or names. But petitioner was and can be the only member in class 2, because no other person sought to establish itself in Puerto Rico prior to the enactment of the first statute. There can never be any other person in this class. The class was fixed by the enactment with petitioner as its only member. It is this discrimination between class 1 and class 2, as described above, which violates the equal protection clause of the Organic Act. Petitioner, like other manufacturers who were operating prior to February 1, 1936, was established in Puerto Rico before the first statute was enacted. It was entitled to equal treatment with them. The selection of February 1, 1936, as the dividing line

was arbitrary and without reasonable relation to any object of the statute except to exclude petitioner from Puerto Rico. The District Court found:

"20. Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trademarks, although there are at least three other companies now operating in Puerto Rico who use on their products trademarks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico." (R. 114)

It was a palpable discrimination in defiance of the equal protection clause of the Organic Act.

The cases upholding state liquor statutes which discriminate in favor of residents of the state as against persons shipping into the state, cited in respondent's brief at pages 38-39, are not in point. Those cases deal with classifications set up by legislatures in regulating the importation of liquor *into* the state. They all rest on the effect of the Twenty-first Amendment which refers only to "the transportation or importation into any state, territory, * * * for delivery or use therein of intoxicating liquors." It does not refer to manufacture within or exportation from a state or territory.

This case presents no question of transportation or importation of liquors into Puerto Rico for delivery or use therein; it deals with something quite different—the right to manufacture in, and export from, a possession of the United States. The prior holdings of this court that the Twenty-first Amendment with respect to liquor freed the states from restrictions upon their police power to be found in other provisions of the Constitution, do not apply.

Ziffrin v. Reeves, 308 U. S. 132, frequently cited by the briefs in opposition, is inferentially authority for

petitioner's position. That case dealt with transportation of liquors from Kentucky to points outside. The Kentucky statute limited the right to transport intoxicating liquors both intrastate and interstate to common carriers. This was held to be a reasonable method of controlling liquor traffic. But all common carriers were given the same privilege and the court recognized the necessity for compliance with the equal protection rule with respect to the transportation of liquor from the state.

The court held that a state may absolutely prohibit the manufacture of intoxicants and their transportation, sale and possession and "further she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them." Describing the statute, the court went on to say:

"Kentucky has seen fit to permit manufacture of whiskey only upon condition that it be sold to an indicated class of customers and transported in definitely specified ways. These conditions are not unreasonable and are clearly appropriate for effecting the policy of limiting a traffic in order to minimize well-known evils and secure payment of revenue. * * *"

The reasonableness of the classification is thus placed squarely in issue. The court recognized its necessity even in construing a liquor statute enacted under the broad powers granted by the Twenty-first Amendment, insofar as the statute referred to matters other than the transportation or importation into a state for delivery or use therein. The court then held there had been no violation of the equal protection clause because the classification was reasonable, saying:

"The record shows no violation of Equal Protection. A licensed Common Carrier is under stricter control than an ordinary contracting carrier and may be entrusted with privileges forbidden to the latter."

If the Kentucky statute, instead of limiting the transportation of intoxicating liquors to common carriers, had stated boldly and bluntly that the Louisville and Nashville Railroad, alone, among all common carriers, should not transport intoxicants, we submit it would have been held that such a statute denied equal protection. We take the liberty of doubting if the court would have held such a classification to be a reasonable and just one. In the words of Mr. Justice Holmes in *McFarland v. American Sugar Refining Co.*, 241 U. S. 79, 86:

"The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it would be sustained. We deem it sufficient to refer to those that were mentioned by the District Court: a classification which, if it does not confine itself to the American Sugar Refinery, at least is arbitrarily beyond possible justice, * * *"

The intervenor (pp. 15-16) attempts to justify the discrimination against petitioner as one between well-known marks or names and marks or names which are less well known, citing *Borden's Farm Products Company v. Ten Eyck*, 297 U. S. 251, and *Old Dearborn v. Seagram*, 299 U. S. 183. What is needed, however, is justification for a discrimination between all trademarks used prior to February 1, 1936 (whether well known or not) and the well-known name and trademarks of petitioner.

Neither of the cases cited proscribed the use of any name or mark because it was well known. The first

authorized a higher minimum price on well-known brands of milk, which was a continuation of an established trade practice. The second furnished additional protection for trade-marks, rather than discrimination against them, by sustaining as valid the Illinois Fair Trade Act making actionable the injurious sale at cut prices of goods bearing trade-marks. Neither case is authority for the kind of discrimination contained in the Puerto Rican statute.

On the other hand, *Mayflower Farms v. Ten Eyck*, 297 U. S. 266, condemned a classification which discriminated between milk dealers engaged in business before the passage of the act and those entering the business afterwards. The discrimination here is much greater since the date selected by the Puerto Rican legislature made the statute retroactive against this petitioner alone, whereas in the *Mayflower Farms* case the distinguishing date was the effective date of the act. The reasons in support of the discrimination against newcomers (that is, those entering the field after a statute becomes effective) so forcibly stated in Mr. Justice Cardozo's dissenting opinion do not warrant the kind of discrimination created by the Puerto Rican statute. The *ex post facto* character of the enactment obviously indicated the purpose to catch someone who was already in the field. Petitioner was that one and the only one.

Sperry & Hutchinson v. Rhodes, 220 U. S. 502, also cited by intervenor, applied only to photographs taken after the enactment of the statute and did not apply retroactively as does the Puerto Rican statute.

In the *Ziffrin* case the selection of common carriers as the exclusive agencies for transporting intoxicants was reasonably related to the objective of the Kentucky statute to channelize the liquor traffic and there-

by protect the public health and morals and the public revenue. Here the selection of the retroactive date of February 1, 1936 as the basis of classification for use of foreign trade-marks and names on distilled spirits has no reasonable relation to any suggested objective of the statute except that of excluding petitioner from Puerto Rico.

Brief for respondent (pp. 47-52) speculates at considerable length upon the objectives of the Puerto Rican legislature. It suggests the purpose to check "financial absenteeism". Even if such a purpose might justify complete exclusion of nonresidents from the liquor business in Puerto Rico or the exclusion of those entering the field after the enactment of the statute, it cannot justify the selection of February 1, 1936 as an arbitrary date before which established operations shall be permitted to continue and after which persons, even though established, must discontinue. The same may be said of the suggested purpose of protecting the Island's "renascent liquor industry".

The suggestion (at pp. 50-52) that the legislature was protecting Puerto Rican industry against the implication of inferiority because of the use of a silver label on Puerto Rican Bacardi and a gold and a white label on Cuban Bacardi is entirely speculative and without any support in the language of the statute or in the record. No such implication from the Bacardi labels can possibly be warranted. Even if such a purpose did actuate the legislature it would not justify proscribing foreign marks used after February 1, 1936 and wide open permission to use all those used prior thereto. That date has no reasonable relation to the determination of which marks might offend the test of implying inferiority to Puerto Rican products.

Respondent's brief (pp. 23, 40-42) also contends that petitioner should be considered as an alien and that an alien is not entitled to the benefit of the equal protection clause. Petitioner is, of course, an American corporation, organized in the State of Pennsylvania. But even if it were treated as an alien, it would be entitled to the benefits of the equal protection clause of the Fourteenth Amendment (*Truax v. Raich*, 239 U. S. 33). The situation can be no different with respect to the equal protection clause of the Organic Act of Puerto Rico.

Any doubt that there might be in this case as to the right of an alien to enjoy equal protection is removed by the Trade Mark Convention which guarantees alien names and marks (of a signatory country) the same protection as granted to those of American nationals.

CONCLUSION.

This legislation in prohibiting the use of foreign trade-marks and trade names after the arbitrary date of February 1, 1936 has no reasonable relation to any object to protect the health, safety or morals, the public revenue or the economic well being of the people of Puerto Rico. In selecting this arbitrary date, the legislature reached back to catch someone already established, recognizing that the object of excluding the particular person at whom the legislation was aimed could not be accomplished except by retroactive legislation.

The person so caught was petitioner and no one else. Certainly a statute which boldly stated that the Bacardi name and trade-marks alone, of those in use prior to the enactment of the statute, could no longer be used would be held violative of the equal protection clause.

That is the result of the Puerto Rican statute as well as its undoubted object. Such a statute should not be permitted to become effective.

Respectfully submitted,

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April 17, 1940.

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CHARLES ELMORE GROPLEY
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

No. 21

BACARDI CORPORATION OF AMERICA, *Petitioner*,
v.
RAFAEL SANCHO BONET, TREASURER, *Respondent*,
and
DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

BRIEF FOR PETITIONER.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1940.

No. 21

BACARDI CORPORATION OF AMERICA, *Petitioner*,

v.

RAFAEL SANCHO BONET, TREASURER, *Respondent*,
and

DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

BRIEF FOR PETITIONER.

THE OPINIONS BELOW.

The first opinion in this case was by the United States District Court for the District of Puerto Rico. It is not officially reported but will be found at R. 95-116. The opinion of the Circuit Court of Appeals for the First Circuit is reported in 109 F. (2d) 57. (R. 429-443.) This court granted certiorari on April 22, 1940, 309 U. S. 652.

JURISDICTION.

The case originated in the District Court for Puerto Rico upon a bill for an injunction brought by petitioner to restrain the Treasurer of Puerto Rico, in his official capacity, from enforcing against petitioner certain provisions of several laws passed by the Puerto Rican legislature. The laws thus attacked deprive petitioner, and petitioner alone among producers of rum in Puerto Rico, of the right to use valid trade-marks and trade names (of Cuban origin) and its corporate name, in its business of manufacturing rum in Puerto Rico and marketing the rum in continental United States and elsewhere. Petitioner is also denied the right to ship rum out of Puerto Rico in containers larger than one gallon, a limitation which, in its practical effect, prohibits bulk shipments for rebottling or sale in the United States and deprives petitioner of a large and profitable business.

The District Court granted an injunction. The Circuit Court of Appeals reversed. The case is here on writ of certiorari, granted April 22, 1940.

On May 18, 1940, Rafael Sancho Bonet, one of the respondents in this case, ceased to be treasurer of Puerto Rico. His successor, the present treasurer of Puerto Rico, is Manuel V. Domenech. A motion to substitute has been filed, together with a stipulation signed by counsel for all parties, agreeing that Domenech may be substituted for Bonet as a respondent in the case. This motion will be presented to the Court when it reconvenes on October 7, 1940.

The jurisdiction of this Court is invoked on the ground that the prohibitions contained in the Puerto Rican laws are invalid as applied to petitioner, because

1. They are in conflict with a treaty between the United States and other foreign nations, known as the Inter-American Convention and Protocol for Trade-Mark and Commercial Protection;
2. They are in conflict with a statute of the United States, the Federal Alcohol Administration Act, and Regulations adopted pursuant to it;
3. They deprive petitioner of due process of law and the equal protection of the laws in a manner forbidden by the Organic Act of Puerto Rico and by the Fifth and Fourteenth Amendments to the Constitution of the United States; and
4. They are in violation of the Commerce Clause of the Constitution of the United States because they constitute an unreasonable restraint on the commerce therein described.

STATEMENT.

Petitioner is a Pennsylvania corporation. By appropriate instruments executed in 1934 and 1935, it received exclusive regional rights to manufacture, sell and distribute Bacardi rum in the United States and certain of its possessions, including Puerto Rico. It likewise received exclusive regional rights to the disclosure and use of the secret processes for making Bacardi rum, together with the territorial right to use on this rum the Bacardi name and trade-marks. The grantor of these rights was Compania Ron Bacardi, S. A., a Cuban corporation, the successor of a family business founded under the Bacardi name in 1862 at Santiago de Cuba. From the beginning certain distinctive labels and devices, as well as the family name of Bacardi, were employed to distinguish this rum, which

has had wide acceptance and has acquired a valuable good will. (Contracts between petitioner and Cuban Bacardi, R. 290-303, 303-305.)

The Cuban Bacardi rum has been sold in the United States and Puerto Rico for many years. The trade-marks applied to it were registered in the United States Patent Office and in Puerto Rico. They included the names "Bacardi" and "Bacardi y Cia", the representation of a bat in a circular frame and certain distinctive labels. Petitioner's right to use these trade-marks in the United States and Puerto Rico was on condition that all rum produced by petitioner would be made in accordance with the secret formula and process disclosed to petitioner by Cuban Bacardi and under the supervision of Cuban Bacardi so that the product should be identical with the Bacardi rum made in Cuba. The District Court found that the rum manufactured by petitioner in Puerto Rico was made under such formula and supervision and was the same as that previously produced and marketed by Cuban Bacardi. (Findings 7, 12; R. 110, 111.)

Early in 1936, petitioner decided to locate its plant in Puerto Rico. On February 22, 1936, petitioner's Vice-President arrived in Puerto Rico to arrange for the establishment of its business there, and, on March 31, 1936, it qualified to do business in Puerto Rico as a foreign corporation. (R. 140-141, 284-285.) It leased a plant and made an immediate expenditure of some \$45,000 for equipment. At the time of this suit, petitioner's total investment in Puerto Rico was \$600,000. (R. 111-112.) It holds rectifiers and distillers permits issued by Puerto Rico (R. 288, 315, 316) and basic permits from the Federal Alcohol Administration. (R. 112, 271-273.) It also holds a certificate issued by the

Federal Alcohol Administration, which approves the use of the following label employed on the rum manufactured by it in Puerto Rico. (R. 269, 275-77.)



Produced in Puerto Rico by Special Authority and under the supervision of
COMPANIA RON BACARDI, S.A. SANTIAGO DE CUBA

SOLE DISTRIBUTORS IN U.S.A. SCHENLEY IMPORT CORP. NEW YORK, N.Y.

After petitioner had duly qualified to do business in Puerto Rico and while petitioner was expending money equipping its plant there, but before any rum was actually produced, the territorial legislature passed Act No. 115, the Alcoholic Beverages Law of May 15, 1936, described as experimental legislation and by its terms to be in effect for one year only. This was a statute of some length but only certain clauses of Section 41 are important here. They provide that

“If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.”

“No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; Provided, (1) *That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits, manufactured in Puerto Rico on February 1, 1936;* and (2) such restrictions shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico”. (Italics supplied)

This was new legislation of a type not theretofore existing. When petitioner qualified in Puerto Rico and began its expenditures there was no legislation interfer-

ing with its business. Respondents in this case do not deny that the new legislation was aimed at petitioner alone or that its purpose was to prohibit all competition by petitioner with already existing producers of rum in Puerto Rico. Petitioner's trade-marks were the only ones affected by the prohibitions above quoted, although there were and are other foreign trade-marks being used on rum distilled in Puerto Rico. (R. 114.) These were exempted from the operation of the act because used locally on February 1, 1936.

The Act of May 15, 1936 was repealed by Act No. 6, the Spirits and Alcoholic Beverages Act of June 30, 1936, which because it was passed at a special session did not become effective until September 28, 1936. It was of limited duration expiring, by its terms, on September 30, 1937. The new act contained the trade-mark limitations of the old and added a provision prohibiting exports in bulk, as follows:

“Section 44. No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; Provided, That this limitation shall not apply to any trade mark or commercial name, used for products manufactured in Puerto Rico prior to the approval of this Act; and Provided, further, *That distilled spirits*, with the exception of ethyl alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, *may be exported from Puerto Rico only in containers holding not more than one gallon*, and each container shall bear the corresponding label contain-

ing the information prescribed by law and the regulations of the Treasurer." (Italics supplied)

On May 15, 1937, the Puerto Rican legislature, by Act No. 149, amended the Act of June 30, 1936 in several particulars. The expiration date was eliminated and the legislation became permanent in character. It added a declaration of policy in connection with the prohibition of the use of certain foreign trade-marks, which reads:

"Section 1 (b). Declaration of Policy. It has been and is the intention and the policy of this Legislature to protect the nascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

The old section 44 of June 30, 1936 was made more drastic by amending it to read:

"Section 44. No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; Provided, That this limitation shall not apply to the designations used by a distiller, recti-

fier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

The prohibition against exportation of rum in containers larger than one gallon was retained in a new Section 44 (b), reading as follows:

"Section 44 (b) Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the treasurer; * * *"

Section 7 of the Act of May 15, 1937, next quoted, was apparently adopted to extend the legislative clemency to a single distiller established in Puerto Rico after February 1, 1936 who desired to use in Puerto Rico a trade-mark which had previously been extensively used, and was well known outside Puerto Rico but only in the continental United States. (R. 172) That section provides:

"Section 7. In regard to trade-marks only, the provisions of the Proviso of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of

distilled spirits outside of the continental United States, at any time prior to said date."

Without Section 7 there were two distillers caught in the legislative mesh. Now, there was only the petitioner. Since petitioner's trade-marks had been extensively used elsewhere as well as in the United States, it was afforded no relief by this Section 7. Since these same marks were not used on rum manufactured in Puerto Rico prior to February 1, 1936, their use after that date was prohibited by Section 44, as amended in 1937. The declaration of policy in Section 1 (b) of the 1937 Act, although an afterthought, shows the intent of the legislature to confine both the domestic sale of rum and its shipment out of Puerto Rico by manufacturers or bottlers established in the Island after February 1, 1936, to brands which had not theretofore gained the international public acceptance won by Bacardi. The target aimed at was petitioner alone. The Bacardi trade-marks are the only ones affected. Indeed it was the intent of the legislature to prohibit their use.

After the passage of the Act of May 15, 1937, (on July 31, 1937) petitioner filed a bill for an injunction in the District Court against the Treasurer of Puerto Rico, the official charged with the administration of the act. The bill sought to restrain him, in his official capacity, from enforcing its provisions dealing with trade-marks and bulk shipments. Two Puerto Rican distillers sought and were permitted to intervene on the side of the Treasurer. After testimony was taken and argument heard, the District Judge made findings of fact and issued an injunction, as prayed. (R. 116-117) The case was reversed solely as a matter of law on appeal by defendant and one intervenor.

There has been no real controversy over the facts. For that reason and because they are clearly and succinctly expressed, the findings of the trial court are set forth here, as follows: (R. 107-114)

“FINDINGS OF FACT.”

“1. Since April 24, 1934, plaintiff, Bacardi Corporation of America, has been and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. It is authorized by its charter to manufacture, produce, distill and redistill, develop, rectify, blend, mix, purify, recover, flavor and denaturize alcohol or alcoholic liquors for beverage purposes.”

“2. Plaintiff, Bacardi Corporation of America, was registered to do business in Puerto Rico on March 31, 1936, under the laws of Puerto Rico relative to foreign corporations, and on April 6, 1936 received from the Treasurer of Puerto Rico a license to do business in Puerto Rico as a foreign corporation.”

“3. Defendant, Rafael Sancho Bonet, is the Treasurer of Puerto Rico, a citizen of the United States of America and Puerto Rico and a resident and domiciled in Puerto Rico and is charged under the laws of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico.”

“4. This is a case of a civil nature between a citizen of the State of Pennsylvania and a citizen of the State of Puerto Rico wherein the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.”

“5. Plaintiff attacks Sections 40, 44 (b) and 97 (b) of Act. No. 6 of the Puerto Rican Legislature, as amended by Act No. 149, and also Section 7 of

said Act No. 149. The pertinent provisions of these sections read as follows:¹"

"6. Continuously since 1862 Compania Ron Bacardi, S. A., a corporation organized under the laws of the Republic of Cuba, and its predecessors have been, and Compania Ron Bacardi, S. A., now is, engaged in the business of producing and selling alcoholic liquors, principally rum, throughout the world."

"7. For more than twenty years, except for the period during national prohibition, Compania Ron Bacardi, S. A. and its predecessors have sold alcoholic liquors, principally rum, in Puerto Rico and elsewhere throughout the United States under trade-marks including the word "Bacardi", "Bacardi y Cia", the representation of a bat in a circular frame, and certain distinctive labels. These trade-marks were duly registered in the United States Patent Office and in the Office of the Executive Secretary of Puerto Rico prior to the passage of the laws complained of in this suit."

"8. During the years 1933 to 1937, inclusive, Compania Ron Bacardi, S. A. has sold in the United States more than three hundred seventy-five thousand (375,000) cases of rum bearing the registered trade-marks and labels set forth in 7 above and has spent over three hundred thousand dollars (\$300,000) in advertising to the public Bacardi rum bearing said trade-marks."

"9. On June 8, 1934, and during the period since then the registered trade-marks and labels set forth in 7 above were and still are of great value to the plaintiff."

"10. On June 8, 1934, plaintiff, Bacardi Corporation of America entered into a written agree-

¹ The findings of the District Court quote from Sections 40, 44, 44(b), 97(b) and 7. As the significant portions of the statute are set out on pages 8, 9 and 10 of this brief, they are omitted here.

ment with Compania Ron Bacardi, S. A., by the terms of which the Cuban company authorized the plaintiff to manufacture and sell rum in certain localities and to use the trade-marks and labels (commonly known as the Bacardi trade-marks and labels) belonging to the Cuban company and set forth in 7 above in connection with such manufacture and sale. On December 19, 1935, Bacardi Corporation of America entered into a supplementary agreement with Compania Ron Bacardi, S. A. extending the territory covered by the contract of June 8, 1934 to include Puerto Rico. The contract of June 8, 1934 provides that all rum manufactured and offered for sale by the plaintiff, Bacardi Corporation of America, to which the said trade-marks and labels are attached, is to be manufactured under the supervision of Compania Ron Bacardi, S. A., and is to be the same rum that the Cuban company manufactures and sells under the said trade-marks and labels.”

“11. That the contract between the Cuban company and the plaintiff company was formally ratified by the two companies, but even before the formal ratification, the use of the labels and trade-marks by the plaintiff was assented to by the Cuban company which actually participated in the use of said labels by plaintiff.”

“12. Bacardi rum is and always has been made according to definite processes and methods. It has been extensively advertised and it enjoys an excellent reputation. In accordance with the contract of June 8, 1934, the secret processes and methods under which Bacardi rum is made have been made available to the plaintiff. Plaintiff, in order to comply with the contract of June 8, 1934 by producing rum in Puerto Rico of the identical quality of that produced in Cuba by Compania Ron Bacardi, S. A. has used the secret processes and methods of Cuban Bacardi and brought to

Puerto Rico from Cuba experts and technicians who have supervised the manufacture of rum for the plaintiff in Puerto Rico. The rum so manufactured in Puerto Rico by the plaintiff is made according to the secret methods and processes made available to plaintiff under the aforesaid contract and is the same product heretofore sold in the United States and Puerto Rico under the trade-marks set forth in paragraph 7 of these findings."

"13. In March, 1936, plaintiff made arrangements for the installation in Puerto Rico of a plant for the conduct of its business. It leased a building at a yearly rental of ninety-six hundred dollars (\$9,600) and expended about forty-five thousand dollars (\$45,000) for the installation of its plant. Up to the present time plaintiff's total investment in the said plant and manufactured product exceeds the sum of six hundred thousand dollars (\$600,000)."

"14. The right to use the Bacardi trade-marks and labels conferred to plaintiff under the contract of June 8, 1934 is a valuable property right. These trade-marks and labels symbolize a valuable good will and are of great value to the plaintiff in marketing its commodity."

"15. Plaintiff has basic permits from the Federal Alcohol Administration to warehouse, rectify and bottle alcoholic beverages in Pennsylvania, which permits were amended on March 8, 1936 so as to authorize plaintiff to operate its business in Puerto Rico. Plaintiff also obtained from the Federal Alcohol Administrator basic permits to distill in Puerto Rico. On July 20, 1936 plaintiff obtained permits for the same purpose from the Treasurer of Puerto Rico."

"16. On May 18, 1937, September 1 and September 3, 1937, the Federal Alcohol Administrator authorized plaintiff to use on rum manufactured

in Puerto Rico certain labels in conformity with the Federal regulations on the subject and containing the registered trademarks which plaintiff, by virtue of the contract of June 8, 1934, has a right to use."

"17. A specimen of the label which plaintiff uses and proposes to use on rum manufactured and to be manufactured in Puerto Rico is as follows." (shown on page 5 of this brief)

"18. Plaintiff has in stock in Puerto Rico about three hundred fifty thousand (350,000) gallons of rum and is ready to bottle and ship that rum to the United States in quantities of approximately ten thousand (10,000) cases per month."

"19. Plaintiff has or doubtless will have offers for the shipment of rum in bulk from Puerto Rico to the United States and is desirous of making such shipments."

"20. Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trade-marks, although there are at least three other companies now operating in Puerto Rico who use on their products trade-marks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico."

"21. If plaintiff is prohibited from using the trade-marks and labels herein referred to it will suffer irreparable damage."

"22. The cost of shipping rum in containers of one-gallon capacity or less is greater than the cost of shipping rum in larger containers."

"23. That the requirements that shipments of rum be made in containers of not more than one gallon is to deny the right to export rum in bulk, as the cost of such shipments would exceed the value of the commodity."

"24. There is no law in force at the present time in Puerto Rico fixing any standard of quality or providing for any inspection of rum manufactured or to be manufactured within Puerto Rico."

"25. The exportation and sale of alcoholic liquors manufactured in Puerto Rico, in Continental United States or elsewhere, will in no way deplete the revenues of Puerto Rico."

"26. That if the plaintiff is not permitted to use its corporate name its business will be greatly damaged and it will suffer great and irreparable loss."

ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In failing to hold Sections 44 and 44 (b) of the Spirits and Alcoholic Beverages Act of Puerto Rico, as amended, invalid as applied to petitioner because these sections attempt to destroy substantive rights in trade-marks guaranteed to petitioner by the 1929 Inter-American Convention and Protocol for Trade Mark and Commercial Protection.
2. In failing to hold said sections of the Puerto Rican Beverages Act invalid as applied to petitioner because in conflict with the Federal Alcohol Administration Act, and regulations thereunder, insofar as they seek to limit petitioner's right to market its products under its own name, trade-marks, trade names and brands, as approved by the Federal Alcohol Administration, and to ship said products in bulk to the United States, as permitted by the Federal Alcohol Administration.
3. In failing to hold that the Congress of the United States has acted in ratifying said 1929 Inter-American Convention and Protocol for Trade Mark and Commercial Protection and in adopting said Federal Alcohol

Administration Act, and has pre-empted the respective fields covered by said Convention and said Act, and that substantive rights obtained by petitioner thereunder may not constitutionally be abridged by the legislature of Puerto Rico.

4. In failing to hold that said sections of the Puerto Rican Beverages Act are in conflict with the equal protection and due process clauses of the Organic Act of Puerto Rico, and of the Fifth and Fourteenth Amendments to the Constitution of the United States, and that said Beverages Act denies petitioner equal protection of the laws and requires the destruction of its property without due process of law.
5. In failing to hold that the said sections of the Puerto Rican Beverages Act violate the Commerce Clause of the Constitution of the United States.
6. In holding that said sections of the Puerto Rican Beverages Act constitute a valid exercise of the police power.

SUMMARY OF ARGUMENT.

I.

Puerto Rico, as an organized territory, has been granted the right to legislate with respect to "all matters of a legislative character *not locally inapplicable*." (Title 48, U. S. C., Section 821) Its legislative powers are not as extensive as those of a state (*Puerto Rico v. Shell Co.*, 302 U. S. 253, 262), are subject to the paramount interests of the nation as a whole, must not affect the free flow of commerce with the United States, and must yield to the national law in case of direct conflict.

II.

By contract and by virtue of the Inter-American Convention for Trade Mark and Commercial Protection, petitioner has the right to use certain valuable trade-marks in Puerto Rico and in the United States. In prohibiting the use of these trade-marks, the Puerto Rican statutes contravene the treaty and are invalid. (*Santouincenzo v. Egan*, 284 U. S. 30)

III.

In its right to use valuable trade-marks, petitioner has a property right that may not illegally be interfered with. (*Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U. S. 183, 194-195) The Puerto Rican statutes forbidding petitioner to use these trade-marks and barring the shipment of rum in bulk, effectively take petitioner's property without due process of law in violation of the Constitution of the United States and the Organic Act of Puerto Rico.

IV.

The Puerto Rican statutes permit petitioner's competitors to use trade-marks without restriction. Petitioner is the only one adversely affected by the legislation. (Finding 20, R. 114) The statutory prohibition is based on an unreasonable and discriminatory classification and denies to petitioner the equal protection of the law for the benefit of competitors. (*McFarland v. American Sugar Refining Co.*, 241 U. S. 79; *Mayflower Farms, Inc. v. Ten Eyck*, 297 U. S. 266; *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79)

V.

The Puerto Rican statutes are not inspection statutes. They do not fix any standard of quality and do not affect the territorial revenues. (Findings 24, 25, R. 114) They are not concerned with the preservation of order, the public safety, health, morals or welfare. They are not a proper exercise of the police power. (*Mugler v. Kansas*, 123 U. S. 623) They are an attempt to regulate commerce in rum far beyond the borders of Puerto Rico.

VI.

The Congress of the United States, in the Federal Alcohol Administration Act, has legislated with reference to commerce and intoxicating liquors within Puerto Rico and between Puerto Rico and any other part of the United States. Petitioner has basic permits from the Federal Alcohol Administration to distill rum in Puerto Rico and to use thereon labels containing certain trade-marks. (Findings 15, 16, R. 112) As the Puerto Rican statutes deny the right to use these trade-marks, they must yield to the superior federal

power with which they are in conflict and cannot deprive petitioner of the right granted to it under the Federal Alcohol Administration Act. (*McDermott v. Wisconsin*, 228 U. S. 115)

VII.

This legislation, by its terms, places restrictions on commerce between Puerto Rico and the United States. In accomplishing its stated purpose, it will directly burden commerce between the various states of the United States in violation of the Commerce Clause. (*Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1; *Vance v. W. A. Vandercook Co.*, (No. 1) 170 U. S. 438, 444; *Carter v. Carter Coal Co.*, 298 U. S. 238. See also *Talbott v. Silver Bow County*, 139 U. S. 438; *Stoutenburgh v. Hennick*, 129 U. S. 141.)

ARGUMENT.

I. The Legislative Power in Puerto Rico is Limited to Matters of Purely Local Concern.

Puerto Rico is an organized territory not yet incorporated into the United States. *Kopel v. Bingham*, 211 U. S. 468, 476. Final authority in connection with the Island government and laws is derived from the Congress of the United States. That authority is exercised under Art. IV, Sec. 3, Cl. 2 of the Constitution.

By custom, organized territories are allowed a considerable measure of self government under the terms of an organic act passed by Congress. The present Organic Act of Puerto Rico dates from 1917. (c. 145, 39 Stat. 951; Title 48, U. S. C., Sec. 731, *et seq.*) It created a territorial legislature and extended its authority to "all matters of a legislative character not locally inapplicable". (Section 37; Title 48 U. S. C. Sec. 821) As this Court has phrased it, the legislative powers conferred were nearly, if not quite, as extensive as those exercised by State legislatures. *Puerto Rico v. The Shell Co.*, 302 U. S. 253, 262.

But the words *not locally inapplicable* mean that the legislature has powers to make laws concerning matters of local application only. It has never been held, and it would seem idle to argue, that Puerto Rico, under the guise of local legislation and the exercise of the police power, can affect larger interests of commerce and trade beyond its own boundaries. An organized territory has only the powers actually granted to it by Congress, unlike a state which possesses all powers not specifically granted away. (*Pennoyer v. Neff*, 95 U. S. 714, 722) No matter how liberally the territorial powers are construed, the basis upon which they rest is far more narrow than in the case of state powers. Even state powers are subject to the universal limitation

that they may not obstruct interstate and foreign commerce. Compare the opinion of Mr. Justice Holmes in *Sanitary District of Chicago v. United States*, 266 U. S. 405, where it is said, page 426, that "the interests of the nation are more important than those of any state".

Within its sphere the state is sovereign but a territory and its laws are always subject to the paramount interests of the nation as a whole. In case of any conflict with these interests, either direct or necessarily implied, the national rather than the local preferences and policies must prevail. The territory exists for the benefit of the nation; not the nation for the territory.

Territorial law must always yield to national law in case of a direct conflict. It appears equally apt to suggest that the local law must fall where it ventures into fields which it was never intended to penetrate. It does not appear that Congress had any intention, in the Organic Act, of delegating authority to Puerto Rico to interfere with matters directly affecting the free flow of trade and commerce with the United States, such as the crippling rule against bulk shipments of rum from Puerto Rico. Nor does it appear that Congress intended Puerto Rico to have the power to favor certain local producers of rum in "the continental American market, and in any other possible purchasing market".² It is unlikely that Congress intended that Puerto Rico should be allowed to discriminate against Cuban trademarks because of their previous foreign use, when Congress had ratified a treaty agreeing to "protect" those marks.

Assuming that Congress and Puerto Rico may each legislate upon the same subject, the legislation of the territory must be carefully scrutinized to see, first, that

² Sec. 1(b) Act of May 15, 1937, quoted on page 8 of this brief.

it is free from conflict with the laws and treaties of the national government, and, second, that it does not overstep the bounds of purely local regulation. The present case, as will hereafter appear, is an example of direct conflict with laws and treaties of the United States. It is also an example of a legislative action beyond the scope of territorial legislative power.

II. The Puerto Rican Law is in Conflict With a Treaty of the United States.

By a proper contract in writing, petitioner is the owner of a regional right to use "the name Bacardi and/or Bacardi Rum and all and singular the trade-marks, brands, labels, caps, bottles, packages, devices, designs and other distinctive appurtenantances, accessories or adjuncts * * *, now owned or hereafter discovered, developed, and/or acquired by Cuban Bacardi", when used upon rum distilled and blended according to the formulas of Cuban Bacardi and under its supervision. (R. 294) This regional right extends to Puerto Rico and the continental United States. All rum produced by petitioner in Puerto Rico has been made under the formulas and supervision of Cuban Bacardi and is identical with the Cuban product. (R. 111)

The name "Bacardi", the representation of a bat and the labels were originally Cuban trade-marks. They were all duly registered in the United States Patent Office and in Puerto Rico, prior to the passage of the Act of May 15, 1936 and subsequent statutes. Before that date they were in actual use in both the United States and Puerto Rico. The right to use these distinctive evidences of genuineness is a valuable property right owned by petitioner which is threatened with destruction.

The Inter-American Convention for Trade Mark and Commercial Protection (46 Stat. L. 2907) was signed in 1929 by the representatives of the American Republics, including the United States and Cuba. It became effective in the United States, by Presidential proclamation, on February 27, 1931. It took effect in Cuba on March 12, 1930.

Petitioner submits that under the treaty provisions, the trade-marks of nationals of the contracting nations, properly registered here, may not be discriminated against because of their origin and prior use in a signatory country. The fact which makes the trade-mark protectible under the treaty is the reason assigned for its destruction under the Puerto Rican statutes.

As stated in the preamble to the Treaty, the delegates of the several signatory countries met in Washington in 1929;

"Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

"Convinced of the necessity of undertaking this work (for the protection of trade-marks, trade names and for the repression of unfair competition and false indications of geographical origin) in its broadest scope, with due regard for the respective national legislations, * * *".

In this spirit the delegates adopted, among others, the following provisions:

Article 3.

"Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally pro-

tected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.”⁸

Article 5.

“Labels, industrial designs, slogans, prints, catalogues or advertisements used to identify or to advertise goods, shall receive the same protection accorded to trade-marks in countries where they are considered as such, upon complying with the requirements of the domestic trade-mark law.”

Article 11.

* * *

“The use and exploitation of trade-marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.”

Article 14.

“Trade names or commercial names of persons entitled to the benefits of this Convention shall be protected in all the Contracting States. Such pro-

⁸Article 3, above quoted, may be compared with Article 6 of the 1911 Convention for the Protection of Industrial Property, Treaty Series, No. 579, 38 Stat. L. 1658, to which both the United States and Cuba were parties, as well as other nations of Europe and Asia and the Americas. Article 6 of the 1911 Convention reads in part:

“Every trade-mark regularly registered in the country of origin shall be admitted to registration and protected in the form originally registered in the other countries of the Union.”

tection shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade-mark."

Article 20.

"Every act or deed contrary to commercial good faith or to the normal and honorable development of industrial or business activities shall be considered as unfair competition and, therefore, unjust and prohibited."

Article 32.

"The administrative authorities and the courts shall have sole jurisdiction over administrative proceedings and administrative judgments, civil or criminal, arising in matters relating to the application of the national law."

Article 35.

"The provisions of this Convention shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs."

No special legislation implementing this treaty is necessary in the United States. Since the Cuban trademarks were properly registered here under existing law, they were at once entitled to all the benefits of treaty protection and petitioner, under Art. 32, above quoted, was entitled to resort to the courts to insure that protection. Where rights of the person or in property, as distinct from political advantage to the nation, are guaranteed by a treaty, it is self-executing when the person or his property is brought within the terms of the treaty and is given the right to resort to

the courts for protection. *Head Money Cases*, 112 U. S. 580, 598-599; *United States v. Rauscher*, 119 U. S. 407, 419; *Asakura v. Seattle*, 265 U. S. 332.

"A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress. But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country. An illustration of this character is found in treaties, which regulate the mutual rights of citizens and subjects of the contracting nations in regard to rights of property by descent or inheritance, when the individuals concerned are aliens. The Constitution of the United States places such provisions as these in the same category as other laws of Congress by its declaration that 'this Constitution and the laws made in pursuance thereof, and all treaties made or which shall be made under authority of the United States, shall be the supreme law of the land.' A treaty, then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute." (*Head Money Cases, supra*, pages 598-599)

Article 11 of the treaty when read with Article 3, recognizes a substantive right in trade-marks, separate and apart from the business with which they were originally identified. In so doing it adds to the common law concepts of trade-marks, some of the principles of the civil law prevailing in Latin American countries.

Under the common law, a trade-mark is not recognized as an independent property right disconnected from the business in which it is used. Such a trade-mark may not be separately assigned; it can be transferred only with the transfer of good will and some product or business with which the mark has become identified. Registration does not create the right to use the trade-mark. It is allowed in recognition of a right already acquired by appropriation and use.

Under the civil law, registration is ordinarily all important and the right to use the mark is dependent upon prior registration and not prior use. Once registered under the civil law, the registrant acquires all the substantive rights which prior use in connection with a product or business confers in the common law countries.

This treaty attempts to reconcile the differing concepts of the two different legal systems and thereby to secure the utmost in protection to those entitled to use the trade-marks in the countries of their origin. "Every mark duly registered or legally protected" in the country of origin "shall be admitted to registration or deposit and legally protected" in the other countries adhering to the treaty. (Article 3) We construe this language to mean that the registration under the federal statutes or in Puerto Rico of a trade-mark originally registered in Cuba preserves both nationally and in Puerto Rico those substantive rights which registration gave in the country of origin.

Another recognition by the treaty of the civil law standards which the common law did not theretofore recognize is the right given by Article 11 to use and exploit the trade-marks separately. Article 3 and Article 11, taken together evidence an intention that the owner of a trade-mark shall receive the same protection and have the same latitude in dealing with the mark in all other countries that are parties to the treaty, that he is entitled to claim in his own country. Rights thus granted are reciprocal in the truest sense and the only requirements are that the marks be entitled to registration and that they be so registered in each country where protection is sought.

The respondents urged and the court below held that, while this treaty was effective in guaranteeing protection against unfair competition, it did not afford relief against it when sanctioned by statutes of a territorial legislature. But where the denial of the right to use lawfully registered trade-marks, including the distinctive portion of petitioner's corporate name⁴, is solely

⁴ Respondent, treasurer of Puerto Rico, raises the point that Sec. 40 of the Act of June 30, 1936, as amended by the Act of May 15, 1937, (quoted R. 107-108) requires that the name of the bottler or canner (not the name of the distiller or blender) appear upon the label attached to the goods. But where that name, or the distinctive part of it, is a trade-mark, forbidden by Sec. 44 to appear upon the label, we assume, in accordance with ordinary principles of statutory construction, that the particular prohibition governs and that the word "Bacardi" may not be used. Furthermore, it is the manufacturer whose name is important in this case, particularly in view of the shipments to be made in bulk to the United States for bottling and distribution there. The point made by respondent is an afterthought and fails even partially to save the statute.

for the purpose of giving an artificial and arbitrary advantage to others in the same business, unfair competition is as much present as though the competitors, by law, were made free to use petitioner's marks. In both cases petitioner needs and can rely upon the "protection" which the treaty explicitly gives.

The argument which respondents have advanced and which the Circuit Court of Appeals adopted, is one which must depend upon a narrow construction of the words of the treaty, although the treaty recites that it is undertaken in the "broadest scope". The argument casts doubt upon the good faith of the United States in its relations with foreign nations. By no stretch of the imagination can the United States be said to fulfill its treaty obligation to *protect* these marks, when one of its territories seizes upon the very fact of their foreign origin and use to impose penalties.

The attitude of Cuba in this matter has already been brought to the attention of the court in this case in a memorandum filed by the Department of Justice transmitting a letter from the Cuban Ambassador to our State Department. That letter, couched in diplomatic language, is a protest against threatened discrimination affecting Cuban trade-marks registered in this country in accordance with the terms of the treaty. It is printed as Appendix A to this brief.

To adhere to the construction of the treaty given below will violate the principles of international comity and present the spectacle of a solemn obligation of the United States being set at naught by the ill considered action of one of its dependencies.⁵

⁵ *Geofroy v. Riggs*, 133 U. S. 258, holds that treaties must be liberally construed so as to carry out the apparent intention of the parties and that following this construction the words "states of the Union" in a treaty between the United States and France

Treaties are the supreme law of the land (Constitution, Art. VI, Cl. 2) and a statute of any state or territory which conflicts with them must be held invalid to the extent of the conflict. *Santovincenzo v. Egan*, 284 U. S. 30, and cases cited, page 40. In the interpretation of treaties this court has said:

"In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided as not consonant with the principles deemed controlling in the interpretation of international agreements. Considerations which should govern the diplomatic relations between nations, and the good faith of treaties, as well, require that their obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. For that reason if a treaty fairly admits of two constructions, one restricting the rights which may be claimed under it, and the other enlarging it, the more liberal construction is to be preferred. *Jordan v. Tashiro*, 278, U. S. 123, 127; *Geofroy v. Riggs*, 133 U. S. 258, 271; *In re Ross*, 140 U. S. 453, 475; *Tucker v. Alexandroff*, 183 U. S. 424, 437; *Asakura v. Seattle*, 265 U. S. 332. Unless these principles consistently recognized and applied by this court, are now to be discarded, their application here leads inescapably to the conclusion that the treaties, presently involved, on their face require the extradition of the petitioner, even though the act with which he is charged would not be a crime if committed in Illinois."

This quotation is from *Factor v. Laubenheimer*, 290 U. S. 276, at pages 293-294. The case considered the effect of an extradition treaty with Great Britain and

include all political communities exercising legislative powers, not only in the United States, but also in the territories and the District of Columbia.

the necessity of over-riding the law of a single state in order to give effect to the intention of the high contracting parties. The treaty named several crimes, for one of which the fugitive had been indicted in England. He took refuge in Illinois where his act was not a crime and it was argued on his behalf that he could not be extradited for that reason. This court came to the conclusion that, since the crime was within the terms of the treaty, the writ of *habeas corpus* should be discharged. In its opinion the court weighed the result which would follow from allowing the treaty operation to vary, in this country, according to the laws of the individual states, saying, at page 300:

“It is of some significance also that the construction which petitioner urges would restrict the reciprocal operation of the treaty. Under that construction the right to extradition from the United States may vary with the state or territory where the fugitive is found although extradition may be had from Great Britain with respect to all the offenses named in the treaty.”

In the present case the question is whether, in our international relations, we can afford to permit treaties to be interpreted in divers ways, depending upon the laws which local self governments may see fit to enact. Other nations contract for their whole people and have the right to expect us to do the same. It is not necessary in this case to determine when, if ever, Puerto Rico might have the right to nullify the protection of foreign trade-marks which this treaty guarantees. The desire of the territorial legislature to stifle free competition by a competitor, who is strong because his goods enjoy the good will of the public, by denying him the right of trade-mark exploitation specifically granted

by the treaty, would seem not to be a ground upon which the treaty violation may be excused. To hold otherwise is to defeat the intent of the treaty in a way particularly calculated to bring this country into disrepute in its international relations and to invite reprisals.

III. The Puerto Rican Statutes Deprive Petitioner of Due Process of Law and Deny it the Equal Protection of the Laws to Which it is Entitled.

It has been suggested, but never decided, that the safeguards contained in the Fifth and Fourteenth Amendments to the Constitution of the United States do not apply to the territory of Puerto Rico. The point does not seem worth elaborating since, with respect to due process and equal protection, Sec. 2 of the Organic Act of Puerto Rico provides: (c. 145, 39 Stat. 951; Title 48, U. S. C. Sec. 737)

“Bill of rights and restrictions: No law shall be enacted in Porto Rico which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws.”

In the light of this provision it becomes immaterial whether the claimed violation of petitioner's rights is a violation of the Constitution or of the Organic Act. It is plain that Congress intended the scope of the protection afforded by the Organic Act to be the same as that extended by the Fifth and Fourteenth Amendments.

The action of the Puerto Rican legislature can be justified only as an exercise of the police power. The Circuit Court of Appeals, differing from the trial court, sustained the statute as within the police power. We shall first examine the extent to which the due process

and equal protection guarantees have been violated by such action and then attempt to show that the police power available to the legislature is not sufficient.

A. Petitioner has been denied due process of law.

In the substantive sense, due process of law deals with the destruction or impairment of vested rights. By contract petitioner has a vested property right to employ the Bacardi trade-marks when they are used in conjunction with rum made in accordance with the secret formulas disclosed to it by Cuban Bacardi. For these privileges petitioner pays a substantial royalty, amounting to \$1.40 per gallon of rum sold. (R. 296) The good will and the trade-marks that symbolize it are property in a very real sense. *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U. S. 183, 194-195. As such they demand protection from unlawful interference. The right to make and sell Bacardi rum and the right correctly to identify it go hand in hand. One right without the other loses most of its value. The product unless labelled when bottled for consumption, has no distinctive appearance which would enable a prospective purchaser to distinguish it from competing brands. He buys on the basis of quality previously determined by his own experience or that of others. The only guarantee of identity and quality is the brand, the visible and visual evidence to the purchaser that he is getting the uniform and palatable product which he wishes to buy.

Bacardi rum has been known since 1862. In that time it has built up a following based upon quality but guided in the purchase of the rum by the name and trade-marks. It is no exaggeration to say that, in this country at least, Bacardi is one of the best known and most frequently purchased brands of rum.

The legislature of Puerto Rico, with considerable ingenuity, has enacted laws which permit petitioner to manufacture the genuine Bacardi rum but which deny it the right to identify the rum as such. If petitioner must attempt to duplicate under another designation, the Bacardi market, now existing by reason of public acceptance of the product, such an effort would require years of time and thousands of dollars in money spent to acquaint purchasers with what, to them, would be a new and unknown product. Petitioner is faced with the immediate loss of the greater part of its market if it is denied the right to use the familiar trademarks on rum which, as the District Court found, is in fact Bacardi rum. (Finding 12, R. 111) Beyond that, petitioner would in the future be required to spend vast amounts to recapture its old market under a new name.

This threatened and imminent damage amounts, we submit, to a taking of property without due process of law.

Likewise, to require petitioner to refrain from shipping rum to the United States in containers holding more than one gallon is to strike a severe blow at its business. The cost of shipping rum in containers of one-gallon capacity or less is greater than the cost of shipping in larger containers. (Finding 22, R. 114; R. 151-152, 174-175) Petitioner has not shipped rum in bulk since the commencement of this suit since it was unable to make long term commitments to potential purchasers in the United States. (R. 150) Petitioner was thus compelled to refuse an inquiry for the purchase of 100,000 gallons of rum because of inability to guarantee bulk shipments. (R. 167, 150) Manufacturers of bottled cocktails which use rum as a base must buy it in bulk. Buying it by the bottle would be too expensive for this purpose. Petitioner has been

compelled to refuse offers for this class of business in the United States. (R. 150, 151) (See also Findings 19, 22, 23, R. 112, 114) No valid reason for prohibiting these bulk shipments appears anywhere in this record.

Enough has been said to show the real and substantial destruction of petitioner's property arising out of the statutes here attacked. The lack of justification for such legislation will be argued hereafter. In the absence of justification there is a deprivation and denial of due process of law in a manner forbidden by the Constitution and by the Organic Act of Puerto Rico.

B. Petitioner has been denied equal protection of the laws.

The equal protection clause frequently goes hand in hand with the due process clause but the protection which they guarantee is not necessarily the same and the limits of that protection frequently differ. *Truax v. Corrigan*, 257 U. S. 312, 331-334. The due process clause is concerned with the preservation of fundamental rights of the person or in property. The equal protection clause strikes down unfairness in the sense of inequitable discrimination between persons similarly situated. The only right to be considered in applying the equal protection doctrine is the right not to have one man unreasonably preferred to the detriment of another. It is a doctrine of equity and fair dealing, a brake on arbitrary governmental action. Its equitable nature is also shown by the decisions in certain classes of cases that hold it embraced by implication in the Fifth Amendment to the Constitution. *Sims v. Rives*, 84 F. (2d) 871, 878; *United States v. Yount*, 267 Fed. 861, 863.

Like many rules of equitable rather than legal application, the equal protection doctrine may be stated

in general terms but has never assumed hard and fast form. We approach it in the spirit of inquiry into, *first*, whether there has been a discrimination against petitioner; *second*, whether that discrimination appears from the record to be arbitrary and unreasonable; *third*, whether Puerto Rico had power to order the discrimination; and, *lastly*, whether the exercise of the power, if it exists, is in aid of a proper public purpose.

It has never been denied that petitioner has been discriminated against. The original act of May 15, 1936 shows this clearly when it states that if any type of distilled spirits becomes nationally or internationally known by reason of its brand, trade mark or trade name showing the proper name of its manufacturer, such name shall not appear upon the labels for any distilled spirits manufactured in Puerto Rico. In different words the same prohibition is retained, in the subsequent acts of June 30, 1936 and May 15, 1937. So far the discrimination is against petitioner and all others having a famous name.

But the original and subsequent acts go further. Not all distillers are discriminated against, even though their names and trade-marks may have been well and favorably known outside of Puerto Rico. If any manufacturers had the good fortune to have used their names and trade-marks in Puerto Rico on or before February 1, 1936 (three and a half months before the first of these acts was passed) they are exempt from all prohibitions respecting future use. But this blanket exemption alone was not deemed sufficient. Section 7 of the Act of May 15, 1937 goes beyond even this. If a trade-mark was not in use in Puerto Rico on or before February 1, 1936 but was used elsewhere prior to that date, it may be thereafter used in Puerto Rico upon one condition; the prior use must have been confined to the continental United States.

Examined alone, without the background of the record, these several statutes with their juggling of dates and exemptions, appear meaningless. But when read in conjunction with the evidence and findings in the case, it appears that petitioner and petitioner alone is the target of the enactments and left outside the pale. It is the only company unfavorably affected, although at least three others were using trade-marks and labels previously in use outside of Puerto Rico. (Finding 20, R. 114) Nor does this legislation necessarily discourage foreign corporations from operating distilleries on the Island. At least two corporations, organized outside of Puerto Rico but manufacturing rum there, were not affected. (R. 173)

This legislation establishes a number of sub-classifications among those classed as producers of rum.

1. Manufacturers using foreign trade-marks on rum produced in Puerto Rico, where such use took place prior to February 1, 1936.

2. Manufacturers regardless of the date of their coming to Puerto Rico, using foreign trade-marks on rum produced in Puerto Rico, where such use did not take place in Puerto Rico prior to February 1, 1936 but where, prior to that date, the trade-marks in question had been used only in the United States.

3. Manufacturers, properly admitted to do business in Puerto Rico after February 1, 1936 and prior to the passage of the Act of May 15, 1936, using foreign trade-marks on rum produced in Puerto Rico and where, prior to that date, the trade marks in question had been used in the United States and elsewhere.

4. Manufacturers coming into Puerto Rico after the passage of the Act of May 15, 1936 and subsequent

laws, using foreign trade-marks previously used outside Puerto Rico.

Members of classes 1 and 2 are permitted to use their foreign trade-marks; members of classes 3 and 4 are not permitted to use such marks. Petitioner is and can be the only member of class 3, a corporation qualified to do business before the discriminating legislation was enacted and to whom it is applied retroactively. Petitioner is the only rum producer using trade-marks popular outside of Puerto Rico who entered Puerto Rico after February 1, 1936 and before the objectionable statute was enacted. Class 3, with petitioner as its only occupant, was closed by the legislative enactment. There are, so far as known, no members of class 4, who would enter Puerto Rico with knowledge of an already existing law. The law is retroactive as against petitioner. It can have no retroactive effect against any but petitioner.

Respondents have attempted to justify the classification based on use prior to February 1, 1936, as the exemption of a class already established and in operation before the restrictive statute was enacted. They state that the first temporary act was enacted May 15, 1936, and that petitioner did not acquire its rectifier's permit from Puerto Rico until July 20, 1936. They recognize, however, that petitioner had qualified to engage in the manufacture and sale of rum in Puerto Rico before the passage of the act, receiving a certificate of registration as a foreign corporation on March 31, 1936, and a license on April 6, 1936. They also recognize that petitioner's federal permit under which it operated in Pennsylvania was amended on March 28, 1936, to authorize operation in Puerto Rico, that a building for the manufacture of rum was leased and that some \$45,000 had been expended between April

6 and May 15, 1936, when the restrictive statute was first enacted.

Respondents admit that a substantial question is presented under the equal protection clause, but attempt to overcome these facts by contending that, because of certain provisions in the Organic Act for Puerto Rico, the bill which became the law of May 15, 1936, must have been introduced in the legislature on or before March 21, 1936. The mere introduction of a bill cannot be given the same effect as its enactment. It cannot be assumed that the legislator introducing a bill controls the vote of the entire legislature. Furthermore, petitioner is advised that the bill, as introduced did not contain the objectionable provisions quoted on page 6 hereof. These were amendments adopted shortly before the passage of the bill. The record shows that the petitioner's vice-president, Mr. Bosch, arrived in Puerto Rico on February 22, 1936, that he concluded to establish a plant there and that arrangements for lease of the building had been completed some time before March 21, 1936. (Finding 13, R. 111-12; R. 140, 305-7) So, while petitioner was not actually in operation when the bill was introduced, it was established in the sense that the decision had been made to operate in Puerto Rico, steps to that end had been taken, obligations had been incurred, and commitments had been made. Doubtless petitioner's activities prompted the passage of the bill but, by the time the statute was enacted, petitioner was established and in operation and had made a substantial investment.

Therefore, the classification adopted by Puerto Rico, with February 1, 1936, as the determinative date, was not equivalent to a classification before and after the passage of the statute. Obviously this date was selected as the first round number before the visit to

Puerto Rico of petitioner's vice-president. The purpose of the classification was to foster monopoly and to give unfair competitive advantages to established distillers at the expense of a corporation of the United States, properly in Puerto Rico and lawfully using trade-marks originally registered with a friendly foreign power. It was a palpable discrimination in defiance of the equal protection clause of the Organic Act.

While there appears no reason why the equal protection clause should be applied differently to Puerto Rico than to a state, the decision below makes this point doubtful. This Court has not passed upon the Organic Act in this respect but its previous decisions indicate that equal protection is not afforded when all engaged in a similar business are given equal treatment in the *production* of goods, but one of them is forbidden to *market* its product except under an assumed name. "In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance." Mr. Justice Cardozo in *Federal Trade Commission v. Algoma Lumber Company*, 291 U. S. 67, 78. This expression is even more apt when the product and its excellence is identified by trade-marks which are a symbol of its quality.

The effect of the statutes in this case is similar to the one stricken down in *McFarland v. American Sugar Refining Co.*, 241 U. S. 79, 86, where Mr. Justice Holmes said:

"The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained. We deem it sufficient to refer to those that were mentioned by the District Court; a classification which, if it does not confine itself to the American Sugar Refinery, at least is arbitrarily beyond possible justice * * *."

The District Court in our case found (Finding 20, R. 114) that:

"Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trade-marks, although there are at least three other companies now operating in Puerto Rico who use on their products trade-marks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico."

In *McFarland v. American Sugar Refining Co.*, *supra*, a Louisiana statute of June 10, 1915 declared the business of buying and refining sugar to be impressed with a public interest. The statute provided for minute regulation and inspection of refineries; provided that any person guilty of monopoly and restraint of trade should be subject to criminal penalties, cancellation of license and the appointment of a receiver for the business. Any concern closing a Louisiana refinery would, under the law, be *prima facie* guilty of monopolizing and the same result followed in the event that a refiner paid less for sugar in Louisiana than in any other state. Section 15 of the act defined the business of refining sugar in such a way that only a large buyer of raw sugar, as distinct from a grower of cane, would be subject to the restrictions imposed. The American Sugar Refining Company, a New Jersey corporation with large refineries in Louisiana was apparently the only refiner in that state affected by the act. It was not denied that the legislation was aimed solely against that corporation.

While, as this Court said in its opinion in the *McFarland* case, many questions would have to be answered before a statute so bristling with severities could be

sustained, the obvious discrimination against the American Sugar Refining Company was a decisive factor in holding the Louisiana statute unconstitutional. Discriminatory legislation is unconstitutional, however general the terms in which it is expressed, where it is aimed against a single corporation and exempts all others in the same line of business. *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79. In that case a Kansas statute regulating the charges of stockyard companies was shown to apply only to the Kansas City yards and not to its smaller competitors. Though the statute was couched in general terms, this Court said, p. 103:

“* * * we cannot shut our eyes to the fact that this act is precisely the same in its effect as though the legislature had said in terms that the Kansas City stock yards alone shall be subjected to its provisions.”

and again at pages 111-112:

“But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other.”

The statute in the *Stock Yards* case was held unconstitutional by a unanimous Court. A majority of the Justices relied solely upon the lack of equal protection because only one of a group engaged in the same busi-

ness was singled out for regulation.* In so holding, the Court looked through the words of the act, perhaps innocent in and of themselves, and weighed their true nature in the light of their operation and effect. That test applied to our case reveals an unabashed intention on the part of Puerto Rico to hamstring Bacardi alone of all the rum producers on the Island. A case of discrimination as flagrant as this aimed against a single corporation has seldom been presented to this Court.

Back of the unconstitutional discriminations practiced by legislative bodies, there is frequently found the purpose to aid and benefit one or more business ventures at the expense of others similarly situated. See *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55; *J. H. McLeaish & Co. v. Binford*, 52 F. (2d) 151, affirmed *per curiam* 284 U. S. 598; *State ex rel. Bacich v. Huse*, 187 Wash. 75, 59 P. (2d) 1101. That purpose in aggravated form is present in this case, where the legislature boldly states (Section 1 (b) of the Act of May 15, 1937, quoted on page 8 of this brief) its intention to favor "domestic" industry against foreign capital in all the markets of the world. Our position is that no statute can stand the test of the equal protection clause when it avowedly seeks to stifle competition by one competitor lawfully doing business in the jurisdiction, for the benefit of others better entrenched in the legislative favor.

Upon the question of classification by arbitrary dates, fixed retroactively rather than prospectively, the case most nearly in point is *Mayflower Farms, Inc. v.*

* Compare also on the same point the cases of *Southern Bell Tel. & Tel. Co. v. Town of Calhoun*, 287 Fed. 381; *Hines v. Clarendon Levee District*, 264 Fed. 127; *Ho Ah Kow v. Matthew Nunan*, 5 Sawyer 552, Fed. Cas. No. 6546.

Ten Eyck, 297 U. S. 266. There the Court held unconstitutional a classification under the New York Milk Control Act based upon a date line drawn retroactively. Mr. Justice Roberts said, pages 273-274:

"We are referred to a host of decisions to the effect that a regulatory law may be prospective in operation and may except from its sweep those presently engaged in the calling or activity to which it is directed. Examples are statutes licensing physicians and dentists, which apply only to those entering the profession subsequent to the passage of the act and exempt those then in practice, or zoning laws which exempt existing buildings, or laws forbidding slaughter houses within certain areas, but excepting existing establishments. The challenged provision is unlike such laws, since, on its face, it is not a regulation of a business or an activity in the interest of, or for the protection of, the public, but an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date. The appellees do not intimate that the classification bears any relation to the public health or welfare generally; that the provision will discourage monopoly; or that it was aimed at any abuse, cognizable by law, in the milk business. In the absence of any such showing, we have no right to conjure up possible situations which might justify the discrimination. The classification is arbitrary and unreasonable and denies the appellant the equal protection of the law."

The *Mayflower Farms* case does not present so aggravated an instance of governmental aggression as the present one. There the party injured was caught in the trap without apparent malice. Here it is not denied that the trap was set malevolently to catch petitioner.

Borden's Farm Products Co. Inc. v. Ten Eyck, 297 U. S. 251, decided the same day as *Mayflower Farms, Inc. v. Ten Eyck*, opinions in both cases being written by Mr. Justice Roberts, is in no way conflicting. In the *Borden's* case the New York Milk Control Act, also involved in the other, was upheld insofar as it permitted price differentials between well and lesser known names in sale of milk to stores. The statute sanctioned the continuance of an established and working trade practice and not the creation of a new discrimination of the type found in the Puerto Rican statutes.

It seems a contradiction in terms to try to apply the test of reasonableness to so unreasonable a law. However, the avowed purpose must be examined to see how closely it checks with the result. The last act, that of May 15, 1937 presents in Section 1 (b) its "Declaration of Policy" seeking to

1. Protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism; and
2. To favor the domestic industry so that it may receive adequate protection against unfair competition in
 - (a) The Puerto Rican market;
 - (b) The continental American market; and
 - (c) In any other possible purchasing market.

The first object above noted is to protect a revived liquor industry (an industry high in favor in Puerto Rico which needs exports and particularly those which will consume its sugar) from all competition by foreign capital. We are not arguing here the right of Puerto Rico to refuse entrance to foreign corporations desir-

ing to do business in Puerto Rico. It has not done so and the question does not arise. Instead we find that at least three other foreign corporations manufacture rum in Puerto Rico, without in any way suffering from the ban of the statute. The language used is high flown but bears no particular relation to the results actually achieved.

The second object is to protect domestic industry against unfair competition here, there and everywhere. It is open to two objections. One is geographical. The legislature is attempting to extend its influence to places where its laws cannot operate. At least outside of Puerto Rico, the distillers of the Island must stand upon their own feet and their success will be measured by the acceptance which they can command for their products. The second objection is that no accusation of unfair competition has been made against petitioner. Much wisdom is often imputed to legislators but, in this instance, they could hardly be clairvoyant enough to know that petitioner would compete unfairly, whatever that term means in this connection.

The suppression of competition to benefit domestic industry was deprecated by Mr. Justice Cardozo in *Baldwin v. Seelig*, 294 U. S. 511. In commenting on the attempt by one state to protect its inhabitants from outside competition, he said at 523:

“To give entrance to that excuse would be to invite a speedy end of our national solidarity.”

We submit that the declaration of policy in the Puerto Rican Statute fairly interpreted, is nothing more than an announcement of a purpose to perpetuate a monopoly by turning back the calendar to a date which will conveniently exclude petitioner, otherwise properly in business on the Island. Such a purpose,

sought to be accomplished by the means adopted, cannot make reasonable an otherwise unreasonable discrimination.

Finally, the discrimination practiced is one against property of foreign origin, the Cuban trade-marks. These are entitled to protection upon compliance with the formalities of registration. The discrimination against its trade-marks threatens to damage petitioner to a very substantial extent. (Findings 21, R. 114) It is entitled to rely upon the equal protection of the laws as a defense against discriminatory legislation like this.

C. The so-called police power of Puerto Rico does not justify this legislation.

In the case of a state, the police power is that residual authority to regulate the affairs and conduct of its inhabitants which has not been expressly granted away. The power flows from sovereignty and is coextensive with it.

In the case of Puerto Rico, its so-called police power does not flow from any reservoir of authority but from a specific grant, the provision in the Organic Act that the legislature may make all laws not locally inapplicable. As heretofore discussed, the grant, although expressed in the negative, is one authorizing laws which apply locally. No power whatever is given to enact laws having a larger geographical application or effect. Since grants of legislative authority to political dependencies may not be extended beyond the ordinary meaning of their terms, the local autonomy of Puerto Rico must be limited strictly to the exercise of self government in local affairs.

As applied to a state, the police power is ordinarily conceived to be the power to enact laws, within constitutional limits, to promote the order, safety, health,

morals, and general welfare of society. The scope of the power is limited only by the constitutions, state and national. As applied to Puerto Rico, it may be conceded that a similar power exists to the extent that it does not geographically or politically infringe the paramount authority of the United States or of the several states within their own borders, and insofar as it does not attempt to deal with matters having more than local scope.

The findings of the District Court (Nos. 24, 25, R. 114) show that the legislation in question is not an inspection statute; that it does not fix any standard of quality; and that the revenues of Puerto Rico are in no way affected. By its terms neither is any question of importation of distilled spirits involved.

Likewise, it is self-evident that these statutes are not concerned with the preservation of order; with the public safety; with the public health; or, in any sense, with the public morals. The question of public morals may be adverted to since it is upon that ground that so many statutes regulating the liquor industry have been upheld in the past. Contrary to the trend of such decisions, it is apparent that Puerto Rico prefers to foster the manufacture and sale of rum, and particularly its exportation. Unfortunately for petitioner, this solicitude is expended entirely for the benefit of a small group who fear the healthy effects of competition in the open market.

There remains the question of legislation for the general welfare. This is a catch-all phrase which, we submit, should be construed here by the rule of *ejusdem generis*, lest the words be given so broad a meaning as to constitute a legislative blank check, subject to no limitation.

This law is not one against deceptive labeling. It is a law encouraging deception in the sense that the maker, petitioner here, is forbidden to identify itself with the commodity it makes. Its undisguised purpose is to relieve a few local distillers of the competition of petitioner's famous brand. It bears no relation whatever to the public welfare.

The question of refusal to permit foreign corporations to manufacture rum in Puerto Rico is not in issue here. Other foreign corporations operate for this purpose in Puerto Rico with the full consent of the authorities. As the District Judge said in this case, (R. 101):

"If the Legislature of Puerto Rico desires to eliminate all competition by foreign capital as a means of protecting the liquor industry, and so as to avoid the increase and growth of financial absenteeism, there is a very simple and direct way to accomplish this purpose."

The legislature chose rather to permit foreign corporations, including petitioner, to enter the liquor business in Puerto Rico. It then chose to deny petitioner alone the right to use foreign trade-marks properly registered in Puerto Rico. In so doing the legislature has violated both due process and equal protection.

Respondents will doubtless argue that any regulation, however oppressive, of the liquor industry is permissible. This, we think, is untenable. Because Puerto Rico might have refused to permit rum to be produced at all, it does not follow that *any* regulations of the industry may be supported. "Liquor laws are enacted by virtue of the police power to protect the health, morals and welfare of the public." *Eberle v. Michigan*, 232 U. S. 700, 707. Where the regulation does not protect the public health, public morals, public revenue,

public order, or public safety, the discrimination and the taking of property are unsupported by any valid public purpose, and must fail. This legislation derives no more strength from its application to the liquor industry than it would have in connection with any one of a hundred other industries, concerning which Puerto Rico might legislate for a public purpose.

Respondents cannot cite any cases which will support the theory of unlimited legislative license to coerce a liquor manufacturer in the position of this petitioner. The leading case on regulation of intoxicating beverages expressly points out the limits beyond which state regulation may not go. *Mugler v. Kansas*, 123 U. S. 623, 663-664:

“Undoubtedly the State, when providing, by legislation, for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument, or interfere with the execution of the powers confided to the general government. *Henderson v. Mayor of New York*, 92 U. S. 259; *Railroad Co. v. Husen*, 95 U. S. 465; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 650; *Walling v. Michigan*, 116 U. S. 446; *Yick Wo v. Hopkins*, 118 U. S. 356; *Morgan’s Steamship Co. v. Louisiana Board of Health*, 118 U. S. 455.”

Mugler v. Kansas denies the right of a state, in its liquor regulations to trespass upon the powers granted to the United States. Here Puerto Rico may not enlarge the powers granted to it by the Congress. Police power over local affairs does not extend to the flow of commerce from Puerto Rico to the mainland and, from a port on the mainland, among the several states. The record and findings show that petitioner has, or

would have, but for this statute, a very large trade in rum shipped from Puerto Rico to the United States. (Finding 18, R. 112) There is no power lodged in the Puerto Rican legislature to forbid the marketing in the United States of the rum so shipped under petitioner's trade-marks. Yet Section 44 as it now stands, forbids anyone to distill, rectify, manufacture, bottle or can any distilled spirits on which there appears, on the container, label, stopper or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, used outside the Island of Puerto Rico, et cetera.

This is a direct and positive prohibition against the use of such designations at any time, anywhere. But the legislature was not content with this prohibition. It went further and forbade (Section 44 (b)) exportation of rum in containers larger than one gallon. Because of the expense involved, forbidding bulk shipments prevents petitioner from bottling in the United States and applying its trade-marks to the bottles, here. As the Circuit Court of Appeals said, it was "presumably passed in part to prevent an evasion of the trade-mark prohibition." (R. 440)

Puerto Rico is thus trying to regulate commerce in rum far beyond its borders. We submit that it lacks the power to do so and that the statutes attempting it are void for that reason alone. No grant of power from Congress authorizing any such thing can be discovered in the Organic Act.

The cases of *Puerto Rico v. Shell Co.*, 302 U. S. 253 and *Puerto Rico v. Hermanos, Inc.*, 309 U. S. 543, though much relied upon by respondents as examples of police power, are not in point. In the *Shell* case the legislature of Puerto Rico adopted an anti-trust Act in all respects similar to the Sherman Act, except that

it applied only locally "in a town or among the several towns of Puerto Rico." It was held that this duplicate, but not inconsistent, legislation was unobjectionable. The *Hermanos* case involved the right of the government of Puerto Rico, under a local act, to bring *quo warranto* proceedings against a corporation violating a federal law limiting the number of acres which might be owned on the Island. The territorial statute was thus in direct aid of the federal law.

Neither of these cases is authority for the extension of police power into fields not heretofore recognized. Neither supports the theory that Puerto Rico's limited power to police local affairs permits it to regulate commerce beyond its borders. Similarly, the liquor cases decided since the Twenty-First Amendment do not justify these statutes. Most of these cases, finding the necessary authority in the Twenty-First Amendment, upheld laws regulating transportation or importation into a state. The restriction here is on export, a situation not covered by the Amendment. In *Premier Pabst v. Grosscup*, 298 U. S. 226, this Court did not pass on the constitutional question.

The most recent, and the only other late liquor case is *Ziffrin v. Reeves*, 308 U. S. 132. This case dealt with transportation of liquor from Kentucky to points outside and, we think, supports petitioner's position. The Kentucky statute limited liquor transportation to common carriers, which, this Court held, was a reasonable method of controlling liquor traffic. The decision recognized that measures designed to regulate the transportation of liquor must be "measures reasonably appropriate," even when in a statute enacted under the Twenty-First Amendment insofar as the measures related to matters other than transportation into a state for use therein. The reasonableness of the attempted classification was placed squarely in issue.

The statutes here violate the bill of rights of the Organic Act and are void for that reason.

IV. The Puerto Rican Statutes Are in Conflict With the Federal Alcohol Administration Act and Therefore Invalid to the Extent of the Conflict.

The entire interstate and foreign commerce in rum is regulated by the Federal Alcohol Administration Act, which became law on August 29, 1935 and was amended June 26, 1936. (c. 814, 49 Stat. 977; c. 830, 49 Stat. 1964; Title 27, U. S. C. Secs. 201-212)¹

By definition in Section 17 the term *interstate or foreign commerce* as used in the act, means "commerce between any state and any place outside thereof, or commerce within any territory or the District of Columbia, or between points within the same state but through any place outside thereof;" *United States* means the "several states and territories and the District of Columbia;" *state* "includes a territory and the District of Columbia;" *territory* means Alaska, Hawaii and Puerto Rico;" and *distilled spirits* "means * * * rum."

Section 3 of the act recites that in order to effectively regulate interstate and foreign commerce in distilled spirits it shall be necessary to obtain basic permits from the administrator (1) to engage in the business (2) to sell or ship spirits in interstate or foreign commerce, (3) to import distilled spirits into the United States. Section 5 (e) prohibits the movement of distilled spirits in commerce unless they are labeled in accordance with the act and unless a certificate of label approval has been first obtained from the administrator. To obtain the certificate of label approval the applicant must, by

¹ Pertinent provisions of this Act are printed as Appendix B to this brief.

the terms of Section 5 (e), comply with the regulations to be issued under the act.⁸

These regulations are a part of the record in this case, (R. 319-376) and provide in part with respect to labels that:

1. They shall bear a brand name, except that if distilled spirits are not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name. (Sec. 32 (a) (1); Sec. 33 (a); R. 331)
2. On the labels of domestic distilled spirits bottled by or for the actual distiller, the name of the distiller and the place of distilling shall appear. (Sec. 32 (a) (3), R. 331; Sec. 35 (a), R. 333)
3. On labels of domestic distilled spirits bottled by or for the actual rectifier, the name of the rectifier and the place where blended, made or prepared shall appear. (Sec. 32 (a) (3), R. 331; Sec. 35 (b), R. 333)
4. The labels shall not contain any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission or inference, tends to create a misleading impression. (Sec. 41, (a) (1); R. 342).

By Section 7 of the act any violation of either Section 3 or Section 5 shall be a misdemeanor, punishable by a fine of not more than \$1,000.00 for each offense.

⁸ All duties of the administrator of the Federal Alcohol Administration have now, by reason of Reorganization Plan No. III, been transferred to the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit. (Treasury Order No. 30, published in Federal Register, June 13, 1940, Vol. 5, No. 115, pages 2212-2213). The Treasury order effecting this transfer provides for the adoption of all prior regulations and no changes have been made in the regulations hereinafter referred to.

The intention expressed in the Federal Alcohol Administration Act is fully to regulate trade and commerce in distilled spirits, from the beginning of production to the point of sale to the ultimate consumer, so long as any part or all of the commerce occurs within a territory of the United States or between a territory and a state or between the several states. The right to distill, rectify, export, import, ship, bottle, label or sell is regulated minutely, either by the act or by its regulations. Such regulations, adopted in aid of the statute and not in conflict with it, have the force and effect of law. *United States v. Grimaud*, 220 U. S. 506; *United States v. Morehead*, 243 U. S. 607.

Under the act, petitioner has been granted basic permits to manufacture, ship and sell rum in interstate commerce, which by definition includes Puerto Rico. (Finding 15, R. 112: R. 268-273) Under the act petitioner has been granted certificates of approval of labels which specifically authorize the use of the label set out on page 5 of this brief. (R. 275) These basic permits and these certificates of approval are in full force and effect. Respondents do not contend that they have been improvidently granted or that there was any deception in their procurement.

The basic permit authorizing petitioner to ship rum from Puerto Rico to the United States does not restrict the size of the containers which may be used in shipment. The act itself contains no such restriction except in Section 6, where sale or shipments in bulk (containers larger than one gallon) are prohibited except to persons duly licensed. It is not contended that petitioner has ever violated Section 6. The act and regulations specifically authorize bulk shipments by petitioner. The regulations adopted pursuant to the act deal specifically with importations in bulk of all man-

ner of distilled spirits, including rum. (Sec. 51, R. 350) Nothing in these regulations would prohibit petitioner from making bulk shipments from Puerto Rico to itself or other authorized persons in the United States. It may reasonably be said that Congress has legislated in this matter and permits shipments of distilled spirits in bulk, contrary to the Puerto Rican statutes.

Certainly with respect to the commerce in rum between Puerto Rico and the United States there is a direct conflict between the Federal Alcohol Administration Act and the Puerto Rican law. Under the federal act petitioner's label is approved and that approval is in all respects consistent with the act and its regulations. Under the territorial act the label is condemned. The federal approval is grounded in large part upon the fact that the label identifies petitioner with the product. The Puerto Rican statute forbids this very thing. The federal act demands honesty in identification. The prohibition in the Puerto Rican statute explicitly forbids this same identification. The federal act permits petitioner to ship rum in bulk to the United States. The territorial act prohibits it. Such conflict cannot legally exist.

Where there is a direct conflict between two statutes, one or the other must give way. It has long been the law that the federal statute is supreme in such instances and that the local statute is invalid to the extent of the conflict, Constitution, Art. VI, Cl. 2; *Domenech, Treasurer of Puerto Rico v. National City Bank*, 294 U. S. 199; *Escanaba Company v. Chicago*, 107 U. S. 678, 683; *Gibbons v. Ogden*, 9 Wheat. 1, 210. This is true even as to local statutes enacted to protect the public health. *McDermott v. Wisconsin*, 228 U. S. 115.

In the *McDermott* case a conflict arose between a Wisconsin statute and the Federal Food and Drug Act of 1906 which controlled the interstate shipment of food and drugs as the Federal Alcohol Administration Act controls the manufacture, shipment and sale of intoxicating liquor. The Wisconsin statute prohibited the use of the designation "Corn Syrup." The Department of Agriculture, under the authority given by the Food and Drug Act approved a label using this designation. We have then a situation paralleling our case. A state statute *prohibiting* the use of certain statements conflicted with the *approval* of those statements by the appropriate federal department. Mr. Justice Day, in holding the Wisconsin statute invalid because of this conflict, conceded the authority of a state to make regulations consistent with the federal law but held that, pages 131-132:

"While this is true, it is equally well settled that the State may not, under the guise of exercising its police power or otherwise, impose burdens upon or discriminate against interstate commerce, nor may it enact legislation in conflict with the statutes of Congress passed for the regulation of the subject, and if it does, to the extent that the state law interferes with or frustrates the operation of the acts of Congress, its provisions must yield to the superior Federal power given to Congress by the Constitution. *Texas & Pacific Ry Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Northern Pacific Ry. Co. v. Washington*, 222 U. S. 370; *Southern Ry. Co. v. Reid*, 222 U. S. 424; *Second Employers' Liability Cases*, 223 U. S. 1; *Savage v. Jones, supra*, 533."

While the source of the federal power in the *McDermott* case was the commerce clause, there is no doubt that the power of Congress to legislate for the terri-

tories gives it equal authority to require Puerto Rico to observe the Federal Alcohol Administration Act.

Where, as here, there is an actual conflict between a territorial statute and an act of Congress, only two steps need be taken in deciding the case. The first is to ascertain whether Congress has the power to pass the act with which the conflict occurs. The second is to ascertain the extent of the conflict so that the supremacy of the federal enactment may be declared in each particular instance.

In view of the plenary power of Congress under the Constitution over territories of the United States, there is no need to elaborate the argument that Congress has the power to apply the Federal Alcohol Administration Act to all commerce originating in Puerto Rico. Nor is it difficult to learn the extent of the conflicting provisions of the two acts. It is clear that petitioner has been specifically authorized by the administrator of the federal act to use a certain label, the essential part of which Puerto Rico specifically forbids to be used. If petitioner was compelled to comply with the Puerto Rican act and remove its name from the label it would be violating the federal act. It is likewise clear that petitioner is authorized by the federal act to make shipments in bulk from Puerto Rico and that this valuable privilege is denied by the territorial law. The conflict is direct. It cannot be removed by interpretation, and can have but one outcome. The Puerto Rican law is invalid to the extent that it attempts to override the will of Congress.

V. The Commerce Clause of the Constitution of the United States is Violated.

In this case the United States District Court for Puerto Rico held the Puerto Rican statutes to be in violation of the commerce clause of Art. I, Sec. 8, Cl. 3 of the Constitution and therefore invalid. The Circuit Court of Appeals was of opinion that the commerce clause was not applicable to Puerto Rico and was consequently not infringed. This Court has not passed upon this issue.

In support of its holding that the commerce clause of the Constitution does not extend to Puerto Rico, the Circuit Court of Appeals cited its earlier decision in *Lugo v. Suazo*, 59 F. (2d) 386, in which a similar bald statement appears at page 390.

There is very little authority upon the point. In *Stoutenburgh v. Hennick*, 129 U. S. 141, the then legislature of the District of Columbia passed an act which required, among other things, that a salesman soliciting business in the District for a concern doing business outside the District must secure and pay for a license. The act was held bad as beyond the powers of the legislature, which had only municipal authority. The opinion of Chief Justice Fuller shows an apparent intent to apply the commerce clause to the District of Columbia. The dissenting opinion by Mr. Justice Miller was based solely upon his view that the commerce clause was not applicable to a territory or the District of Columbia.

In deciding the present case, the District Court had the authority of *Porto Rican American Tobacco Co. v. Gallardo*, 13 P. R. Fed. 465, where one of the grounds given for nullifying a territorial statute of Puerto Rico was the commerce clause of the federal constitution.

While undoubtedly an argument can be made against

construing the power "to regulate commerce * * *" among the several states" as including the power to regulate commerce between a territory and a state, the opposite conclusion does less violence to the purpose served by the commerce clause. Where a unified control over national and international, as distinct from purely local commerce, is both necessary and desirable, an interpretation which will attain that end is to be preferred. Precedent for this view is found in the construction of statutes to include territories where only the word *state* is mentioned. *Talbot v. Silver Bow County*, 139 U. S. 438 and cases cited on page 444; *Domenech, Treasurer of Puerto Rico v. National City Bank*, 294 U. S. 199, 204. In the *Talbot* case an act of Congress permitted *states* to tax the shares of national banks at the same rates as other moneyed capital in the hands of its citizens. By interpretation of the statute, the territory of Montana was accorded the same privilege and senseless distinctions were thus avoided.

We suggest that the application of the commerce clause to the shipment of goods originating in Puerto Rico and destined for continental United States is one which this Court might very well decide. Such a decision will settle a point of constitutional law of more than ordinary interest. However, petitioner is convinced that the commerce clause may properly be applied to this case upon other grounds and that, so applied, there has been a prohibited interference with the free flow of commerce in violation of the constitution mandate.

Rum manufactured in Puerto Rico is largely for shipment and sale to the United States. It is one of the most important manufacturing industries in Puerto Rico today. Exports of rum from the Island were

worth \$5,254,828 in the fiscal year 1939-1940, a growth of more than 1000 per cent from \$40,593 worth of rum exported in the fiscal year 1934-1935. (These statistics are taken from a pamphlet published in English by the Chamber of Commerce of Puerto Rico, copyrighted in the United States in 1940, entitled "Puerto Rican Rum in the United States Market." Because it gives an excellent idea of the rum industry as it exists today in Puerto Rico as well as the yearly shipments of cases of rum from Puerto Rico to the United States, by distillers, we have reprinted this pamphlet as Appendix C to this brief).

At the time this case was tried before the District Judge, petitioner had on hand 350,000 gallons of rum which it desired to ship to the United States. (Finding 18, R. 112) It also appeared that there was a demand in the United States for Bacardi rum in bulk, to be used there in the preparation of bottled Bacardi cocktails and for other purposes. (Finding 19, R. 112, 150, 151, 167) By reason of the injunction granted in this case, petitioner has been able to ship to the United States under its own trade-mark and label, 61,580 cases of rum in 1937, 24,507 cases in 1938, 73,950 cases in 1939 and 71,320 cases for the first six months of 1940. (See statistics of shipments, Appendix C).• Three other Puerto Rican distillers have shipped comparable quantities during the same period and it is apparent that Bacardi has no monopoly on the business, having shipped approximately 20 per cent of the total in 1937, 9 per cent in 1938, 18 per cent in 1939 and 28 per cent in 1940.

Transportation of the rum from Puerto Rico to the United States does not end at the port of entry into this country. On the contrary, it continues throughout the nation and from state to state, wherever rum is

sold. As stated in Appendix C, "the brands manufactured by Puerto Rico's leading distilleries are offered for sale in every State of the Union where liquors are permitted to be sold." Mr. Bosch, Vice-President of petitioner, testified at the trial of this case that since the repeal of prohibition Bacardi rum has been sold in the United States in every state except the dry states. (R. 134) It has a wide spread distribution in this country based upon its well known name, which connotes a superior quality.

The commerce in Bacardi rum begins upon shipment from Puerto Rico. It does not end until the goods are at rest in the several states of the United States and have become part of the total property of the state, for sale to the ultimate consumer. This distribution from state to state and through one state into another is part of the original journey commenced in Puerto Rico and is the reason why the journey was undertaken. This portion of the transportation, plainly and without argument, is commerce as the word is used in Art. I, Sec. 8, of the Constitution. "The right to send liquors from one state into another, and the act of sending the same, is Interstate Commerce, the regulation whereof has been committed by the Constitution of the United States to Congress." *Vance v. W. A. Vandercook Co.* (No. 1) 170 U. S. 438, 444.

"As used in the Constitution, the word 'Commerce' is the equivalent of the phrase 'intercourse for purposes of trade' and includes transportation, purchase, sale and exchange of commodities between the citizens of different states." *Carter v. Carter Coal Co.* 298 U. S. 238, 298. If, as has been held, a state may not usurp the power of Congress over interstate commerce (*Bethlehem Motors Corp. v. Flynt*, 256 U. S. 421) it must follow that a territory has no such privilege.

The purpose of Puerto Rico is plain. In the declaration of policy added May 15, 1937 to its statutes governing the manufacture and sale of distilled spirits, it is stated that the policy of the legislature is to protect the renascent liquor industry against unfair competition "in the Puerto Rican market, the *continental American market, and in any other possible purchasing market.*" As heretofore pointed out, the alleged "unfair competition" is nothing more than the competition of petitioner's rum with the Bacardi trade-marks on the label with the brands already selling in and from the Island.

To "protect" the few favored distillers in the continental American market and elsewhere, Puerto Rico enacted the provision denying the right to export rum in containers holding more than one gallon. The effect of this provision is to make it economically impossible for petitioner to bottle Bacardi in the United States and there to apply the prohibited trade-marks and corporate name. It also deprives petitioner of a large trade in bulk rum with users in the United States.

We submit that Puerto Rico has imposed a direct burden upon interstate commerce in a manner prohibited by the commerce clause and that this would be true even though Congress had not acted in this field by passing the Federal Alcohol Administration Act. Clearly commerce in intoxicating liquors is one demanding uniformity of regulation even in the absence of federal action. In cases of this class the constitution itself occupies the field whether Congress has entered it or not. Compare *Kelley v. Washington*, 302 U. S. 1, 9; *Baldwin v. Seelig*, 294 U. S. 511; *Atlantic Coast Line R. R. Co. v. Wharton*, 207 U. S. 328, 334; *Philadelphia & Southern Steamship Co. v. Pennsylvania*, 122 U. S. 326; and *South Carolina Highway Dept. v. Barnwell*

Bros. 303 U. S. 177, cases collected in footnote, pages 184, 185. It is all the more clear that Puerto Rico is attempting an unconstitutional interference with commerce when Congress has acted and has prescribed detailed rules for the conduct of the business of manufacturing and marketing distilled spirits.

In the section of this brief devoted to a discussion of the police power, we have shown what is readily apparent, that the statutes attacked do not protect health, safety or morals. The trial court found that they were not inspection statutes and in no way affected the revenues of Puerto Rico. (Findings 24, 25, R. 114) It is clear that they are in restraint of legitimate trade and commerce insofar as they are intended to operate and will operate materially to decrease the free flow of commerce from Puerto Rico to the United States and from one state to another in Bacardi rum manufactured by petitioner. It is equally clear that even though it should be held that the commerce clause does not apply to direct shipments from the Island to the Mainland,^{*} it must and does apply to that portion of the commerce which takes place after continental United States is reached and before the packages come to rest in the place of ultimate sale to the consumer. To that extent at least, the commerce clause is applicable and infringed. Since the whole movement out of Puerto Rico is a continuous one, the whole regulatory scheme of the Puerto Rican legislation is bad and must fall. No warrant exists for giving extra territoriality to statutes which offend the federal Constitution.

This case is not unlike *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1. There a business practice had grown up of taking shrimp from the waters of Louisi-

^{*} Compare *American Trading Co. v. Heacock Co.*, 285 U. S. 247.

ana for canning at Biloxi, Mississippi, whence, when canned, the shrimp were shipped in interstate commerce. Louisiana passed a law, purporting to conserve the natural resources of the state, which prohibited the exportation of the shrimp unless the heads and hulls were removed. The real purpose was to force, through commercial necessity, the removal of the packing and canning industries from Mississippi to Louisiana. This appeared not only from the record but from the face of the statute which allowed free movement of the shrimp in interstate commerce provided the meat was removed from the hulls in Louisiana.

In the course of the opinion the court said, pages 10, 11:

"One challenging the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce. *Minnesota v. Barber*, 136 U. S. 313, 319. *Brimmer v. Rebman*, 138 U. S. 78, 81. In determining what is interstate commerce, courts look to practical considerations and the established course of business. *Swift and Co. v. United States*, 196 U. S. 375, 398. *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 59. *Binderup v. Pathe Exchange*, 263 U. S. 291, 309. *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 198, 200. Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among States. And a state statute that operates directly to burden any of its essential elements is invalid. *Dahnke-Walker Co. v. Bondurant*, 257 U. S. 282, 290. *Shafer v. Farmers Grain Co. supra*, 199. A state is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are

required to satisfy local demands or because they are needed by the people of the state. *Penna. v. West Virginia*, 262 U. S. 553, 596. *Oklahoma v. Kansas Nat. Gas Co.*, 221 U. S. 229, 255."

And again at pages 12, 13:

"Consistently with the Act all may be, and in fact nearly all is, caught for transportation and sale in interstate commerce. As to such shrimp the protection of the commerce clause attaches at the time of taking. *Dahnke-Walker Co. v. Bon-durant, supra*. *Penna. v. West Virginia, supra*, 596, *et seq.* ***"

"If the facts are substantially as claimed by plaintiffs, the practical operation and effect of the provisions complained of will be directly to obstruct and burden interstate commerce. *Penna. v. West Virginia, supra*. *Oklahoma v. Kansas Nat. Gas Co., supra*."

In the *Foster-Fountain* case the shrimp were caught for export to a neighboring state. In the present case Bacardi rum is produced by petitioner in Puerto Rico for shipment to ports of entry in the United States and thence to the several states. In the cited case the state was "without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the State." In the present case Puerto Rico is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground (however erroneous) that others in the Puerto Rican liquor industry would benefit if the shipment and sale of a particular brand can be prevented.

Where a statute is obviously directed, not against the manufacture of a product, but against its sale outside the jurisdiction, that statute must be tested by careful comparison with the commerce clause, lest it be permitted to impede the free flow of lawful commodities in commerce. This is particularly so when Congress, as it has in the Federal Alcohol Administration Act, reserved to itself the right to regulate commerce in rum in Puerto Rico and between Puerto Rico and continental United States. When so tested, it is apparent that the Puerto Rican legislature has not only exceeded its powers in other ways but has attempted directly to regulate interstate commerce which right the Constitution gives to Congress alone.

Respectfully submitted,

EDWARD S. ROGERS,
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PRESTON B. KAVANAGH,
JEROME L. ISAACS,
Attorneys for Petitioner.

APPENDIX A.**Note Submitted to the Secretary of State on Behalf of the Cuban Government.**

The following note was delivered to the Honorable Cordell Hull, Secretary of State, and by letter of April 2, 1940, was transmitted by the Secretary of State to the Attorney General, and was filed with this Court by the Solicitor General:

MARCH 25, 1940.

EXCELLENCY: The attention of my Government has been called to the case of *Bacardi Corporation of America v. Bonet*, now before the Supreme Court of the United States on petition for certiorari. That case presents the question of the validity of certain legislation of Puerto Rico in its application to the trade-marks and commercial names of Compañía Ron Bacardi, S. A. of Cuba, which had granted to Bacardi Corporation of America the right to use its trade-marks and commercial names in Continental United States and Puerto Rico. It is claimed by the petition in that case that the statute in question violates the Inter-American Trade-Mark Convention and Protocol of February 20, 1929, in that the very circumstance of use in Cuba which brings the marks and names within the protection of the Treaty is made the occasion, in the Puerto Rican Legislation, for prohibiting their use in connection with rum manufactured in Puerto Rico.

It is generally believed among trade-mark proprietors in Cuba that this Puerto Rican legislation violates the terms as well as the spirit of the Treaty to which Cuba and numerous other American countries are signatories. A decision by the highest Court of the United States upon that question is of great importance to Cuban nationals engaged in business in the United States and Puerto Rico.

as well as to the Government of Cuba in determining its own policies under the Treaty.

It is respectfully requested that the foregoing views of the Cuban Government be brought, if possible, to the attention of the Supreme Court of the United States in an appropriate manner for its consideration in the case which is now before it.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

For the Ambassador:

José T. Barón,
Minister-Counselor.

His Excellency Mr. CORDELL HULL,

Secretary of State, Washington.

APPENDIX B.**Federal Alcohol Administration Act.**

(c. 814, 49 Stat. 977; c. 830, 49 Stat. 1964)

(Title 27, U. S. C., Secs. 201-212)

Sec. 3. Unlawful Businesses Without Permit.—In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

* * * * *

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wines so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

* * * * *

Sec. 4. Permits.—

* * * * *

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

Sec. 5. Unfair Competition and Unlawful Practices.

—It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

* * * * *

(e) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marketing, branding, and labeling and size and fill of container. (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumers; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by state law and except that, in case of wines,

statements of alcoholic content shall be required only for wines containing more than fourteen per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties produced by blending or rectification), if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or of false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by the use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization:

* * * * *

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection (1) no bottler of distilled spirits, no producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, and no brewer or wholesaler of malt beverages shall bottle, and (2) no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt bev-

erages, respectively, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936 in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after 30 days' public notice), unless, upon application to the Administrator, he has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe:

* * * * *

Sec. 6. Bulk Sales.—

(a) **Offenses.**—It shall be unlawful for any person—

(1) to sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the Administrator, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, a person operating a bonded warehouse qualified under the Internal Revenue laws or a class 8 bonded warehouse qualified under the customs laws, a wine maker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any state or political subdivision thereof.

* * * * *

(c) **"In Bulk."**—The term "in bulk" means in containers having a capacity in excess of one wine gallon.

Sec. 7. Penalties; Jurisdiction.—The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any territory, of the district where the offense is committed or threatened or of which the offender is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent

and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of Sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than \$1,000 for each offense.

* * * * *

MISCELLANEOUS.

Sec. 17. (a) As used in this Act—

* * * * *

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

* * * * *

(6) The term "distilled spirits" means * * * rum
* * *,

* * * * *

NOTE: The labeling regulations issued by the Federal Alcohol Administration pursuant to this Act are contained in the Record, pp. 319-376.

APPENDIX C.**Puerto Rican Rum in the United States Market.**

Copyright 1940,
Chamber of Commerce of Puerto Rico,
San Juan, P. R.

Obviously Puerto Rico has been a source of rum as long as the Island has been a sugar producing country. Three hundred years ago, Puerto Rico's sugar planters made rum,—a product for which the Island had become justly famous long before the American Occupation in 1898.

Rum making as an art did not die out in Puerto Rico during the life of the 18th Amendment. The Island had a large quantity of high grade molasses,—the raw material of rum fermentation and distillation. When the Prohibition amendment was finally repealed, Puerto Rico had lost much ground, but was well prepared to immediately take up where she had left off at the end of the World War. *Today Puerto Rico produces a large part of the rum consumed in the United States, and the brands manufactured by Puerto Rico's leading distilleries are offered for sale in every State of the Union where liquors are permitted to be sold.* (Italics supplied.)

THE NEW ERA

The present distilling business in Puerto Rico dates from 1934, when the abrogation of the Prohibition Amendment again permitted the Island to bottle and export its famous product.

In the first year of the new era, Puerto Rico exported only some few thousand cases of rum. Shipments had risen to 43,200 cases at the end of 1935. In 1940 Puerto Rico expects to export more than half a million cases of rum. The distilling industry in Puerto Rico paid about \$200,000 in direct excise taxes in 1935. The Insular Government collected, in direct excise taxes on exported rum, more than \$2,000,000 in 1939.

THE INDUSTRY

The distillation of rum in Puerto Rico a few decades ago was a personal art. Distillers were small entrepreneurs, frequently sugar planters, and there was no uniformity in their product from week to week and from month to month. Some individual rum makers were justly famed for their product, but accident played a large part in the process. Individual blending formulae were closely guarded family secrets and rum makers slept by their vats and stills. Nevertheless, the product was by present standards, "spotty."

Today Puerto Rico's distilling industry is as modern as nylon. The Island's distilleries are, indeed, but fabricating extensions of laboratories. Processes in Puerto Rico's distilleries today are controlled down to fractions of one part in one hundred thousand. The product which has become famous all over the world in recent years under the general classification of "Puerto Rican Rum" is uniform in purity to a degree quite inconceivable a few years ago. Fermentation agents are controlled in hermetically sealed vats. The production of Puerto Rican rum is, today, a matter of chemical, not rule of thumb, control. Distillers in the modern field must be organic chemists.

Still highly prized by Puerto Rico's individual distillers are blending formulae which give individual brands of Puerto Rican rum their distinctive characteristics,—but Puerto Rico's standards today are based on scientific accuracy, not guesswork.

HISTORICAL STATISTICS

The Chamber of Commerce of Puerto Rico, drawing on the export statistics derived from the manifest postings of Listin Diario, a C. of C. organ, has set down in this little pamphlet, on the pages which follow, a statistical summary of the first five years of Puerto Rico's rum shipments to the United States. Because there are several hundred registered rum brands in Puerto Rico today, the statistics group exports by distillers, not brands.

This month by month compilation of rum export figures, better than anything that could be written about Puerto Rican rum, testifies to the growing demand in the United States for a product which, a few years ago, was unknown because it did not exist.

The distillation of rum is one of the most important manufacturing industries in Puerto Rico today. In fiscal 1939-40, exports from the Island were worth \$5,254,828, as against a figure of \$40,593 in fiscal year 1934-35.

1935

NOTE: Puerto Rico shipped to the United States in the year 1935 approximately 43,200 cases of rum. Details of these shipments by distilleries are not available in accurate form.

On the following pages are the detailed statistics on shipments of rum from Puerto Rico, month by month, from January 1, 1936, forward.¹⁰

The Chamber of Commerce of Puerto Rico.

EXPORTS OF RUM BY FISCAL YEARS, DOLLAR VALUE.

(Bureau of Internal Revenue, Government of Puerto Rico).

1934-35	\$ 40,593
1935-36	\$1,040,409
1936-37	\$2,028,231
1937-38	\$3,106,279
1938-39	\$3,194,849
1939-40	\$5,254,828

¹⁰ In printing these statistics on the following pages, figures for monthly shipments of cases of rum have been omitted and only yearly totals are given.

1936 (Standard Cases)

TOTAL	..	110,185
Brugal & Co., Inc.	.....	2,650
González, E. R. & Co.	.....	4,475
Julia, Licorería	.....	386
La Bodega, Licorería	.....	355
Marin, Licorería, Inc.	.....	4,119
Nieves, J. R. & Co.	.....	60
Ronrico Corporation	.....	90,417
Serrallés, Destileria, Inc.	.....	7,545
Miscellaneous	.....	178

1937 (Standard Cases)

TOTAL	..	302,402
Bacardí Corporation of America	.....	61,580
Brugal & Co., Inc.	.....	8,946
Carioca, Destilería, Inc.	.....	64,208
Fernandez, J. Sucrs. S. en C.	.....	379
González, E. R. & Co.	.....	722
Julia, Licorería	.....	1,388
Marin, Licorería, Inc.	.....	8,285
National Liquor Co., Inc.	.....	9,570
Nieves, J. R. & Co.	.....	20
Pascual, Mateo M.	.....	1,829
Ronrico Corporation	.....	94,496
Serralles, Destileria Inc.	.....	48,839
Torruellas, L. & Co.	.....	100
West Indies Rum Distilleries, Inc.	.....	147
Miscellaneous	.....	1,893

1938 (Standard Cases)

TOTAL	..	275,955
Bacardí Corporation of America	.....	24,507
Barceló Marques & Co.	.....	3,686
Brugal & Co., Inc.	.....	11,058
Carioca, Destilería, Inc.	.....	80,185
Fernandez, J. Sucrs. S. en C.	.....	1,180
Julia, Licorería	.....	2,909

Marin, Licorería, Inc.	7,942
National Liquor Co., Inc.	11,006
Nieves, J. R. & Co., S en C.	71
Pascual, Mateo M.	2,382
Ronrico Corporation	82,959
Serralles, Destileria, Inc.	46,709
Torruellas, I. & Co.	165
West Indies Rum Distilleries, Inc.	104
Miscellaneous	1,092

1939 (Standard Cases)

TOTAL	407,683
Antillano, Cia. de Ron	14,672
Bacardí Corporation of America	73,950
Barceló Marques & Co.	6,770
Brugal & Co., Inc.	15,247
Carioca, Destilería, Inc.	104,338
Fernandez, J. Suers. S. en C.	1,196
Grau, Primitivo	200
Julia, Licorería	3,986
La Bodega, Licorería, Inc.	35
La Gioconda, Inc.	50
Marin, Licorería, Inc.	12,544
National Liquor Co., Inc.	10,973
Nieves, J. R. & Co., S. en C.	655
Pascual, Mateo M.	5,029
Ronrico Corporation	87,063
Serralles, Destileria, Inc.	62,875
Torruellas, I. & Co.	391
Tropical, Destileria, Inc.	5,452
West Indies Rum Distilleries, Inc.	1,136
Miscellaneous	1,121

1940 (Six Months)

TOTAL	249,287
Antillano, Cia, de Ron	9,074
Bacardí Corporation of America	71,320
Barcelo, Marquez Co.	4,145
Brugal & Co., Inc.	9,086

Carioca, Destilería Ron de Inc.	60,755
Fernandez, J. Sucs. S. en C.	530
Grau, Primitivo	605
Julia, Licorería	1,880
La Bodega, Licorería	16
La Gioconda, Inc.	50
Marin, Licorería, Inc.	5,884
National Liquor Co., Inc.	9,337
Nieves, J. R. & Co., S. en C.	974
Pascual, Mateo M.	2,380
Ronrico Corporation	47,366
Serralles, Destilería, Inc.	19,340
Torruellas I. & Co.	241
Tropical, Destilería Inc.	3,973
West Indies Rum Distilleries, Inc.	2,091
Miscellaneous	240

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OCT 18 1940

WILLIAM CLARK CROMLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940.

No. 21.

BACARDI CORPORATION OF AMERICA, Petitioner,

v.

MANUEL V. DOMENECH (formerly Rafael Sancho Bonet), Treasurer, Respondent,

and

DISTILLERY SERRALES, INC., Intervenor-Respondent.

REPLY BRIEF FOR PETITIONER.

EDWARD S. COOGAN,
KATE D. LOOS,
PRESTON B. KAVANAGH,
JEROME L. ISAACS,
Attorneys for Petitioner.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

—
No. 21.
—

BACARDI CORPORATION OF AMERICA, *Petitioner*,

v.

MANUEL V. DOMENECH (formerly Rafael Sancho Bonet), *Treasurer, Respondent*,

and

DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

REPLY BRIEF FOR PETITIONER.

The brief for respondent treasurer of Puerto Rico relies upon arguments developed under 14 main headings and expanded under 62 subdivisions. The brief for the intervenor-respondent is of a less complicated construction. Some of the material in both is irrelevant and much of it merely attempts to meet petitioner's main brief. Certain other arguments may properly be answered in reply.

We shall refer to the brief for the treasurer of Puerto Rico as that of "respondent" and to the brief for Destileria Serralles, Inc. as that of the "intervenor". When both are referred to, we shall speak of "respondents".

Apart from questions of conflict with a treaty of the United States (The Inter-American Convention for Trade Mark and Commercial Protection) and a statute of the United States (Federal Alcohol Administration Act), hereinafter treated, there remains a basic question of whether the police power available to the Puerto Rican legislature can possibly be enlarged to sustain laws designed in their inception and operation to control the names under which goods manufactured in Puerto Rico can be marketed in the United States and elsewhere. Errors into which respondents have fallen in their conception of the police power of Puerto Rico, as being almost unlimited in extent, will be developed as our first point in reply. Questions raised by their treatment of the conflicts with the treaty and federal statute will be discussed in that order. Finally, the point of estoppel, not heretofore mentioned by respondents in this Court, will be answered briefly, as one completely lacking in substance.

I.

The Scope of the Police Power Which May be Exercised by the Puerto Rican Legislature Has Been Greatly Exaggerated by Respondents.

The briefs of respondent and intervenor make it clear that the intent of the Puerto Rican legislature is to prevent the sale in the United States or elsewhere, but principally in the United States, of rum manufactured in Puerto Rico which bears petitioner's trade marks of Cuban origin. These briefs do not deny that

the legislation is aimed against petitioner and is effective solely against it, although the record shows that other corporations foreign to Puerto Rico are distilling rum there and that other trade-marks of foreign origin are being legally used to identify such rum.

Respondent admits (Brief, p. 56) that the issues of due process and equal protection raised by petitioner are substantial but both the answering briefs rely upon the argument that the police power overrides these guarantees (Respondent, brief, pp. 26-38; Intervenor, brief, pp. 24-31). Respondent refers to the powers of the English Parliament (Brief, p. 30), hardly applicable here. Both briefs liken the police powers of Puerto Rico to those of a state. Each concludes that a state is in a position of inferior power because hampered by the commerce clause of the federal Constitution (Art. I, Sec. 8, cl. 3), which, they say, does not apply to Puerto Rico. (Respondent, brief, p. 32; Intervenor, brief, p. 52).

Unlike the powers of a state and of the English Parliament, all Puerto Rican legislative powers are granted solely by Congress, subject to constitutional checks. The power actually granted in this case is confined to "all matters of a legislative character not locally inapplicable." (Organic Act of Puerto Rico, Sec. 37; Title 48, U. S. C. Sec. 821.) This Court has stated the matter in *Puerto Rico v. The Shell Co.*, 302 U. S. 253, 260:

"These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, in respect of which this court said in *Clinton v. Englebrecht*, 13 Wall. 434, 441, that the theory upon which these territories have been organized 'has ever been that of

leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress;'".

And see also *Domenech v. Havemeyer*, 49 F. (2d) 849, 850.

The Court in the *Shell* case was careful to point out that the power conferred was one to legislate in *local* matters (p. 262). It nowhere appears that Puerto Rico has been given any power to pass legislation whose principal and intended effect is to direct the course of trade and commerce beyond the borders of the Island.

Contrast this limited grant of power with the purpose of the statute here attacked. The only restriction placed upon the manufacture of rum in Puerto Rico is that it shall not be marketed in the United States or any other possible consuming market under trademarks theretofore known to the public in those places, unless such marks were used on Puerto Rican rum prior to February 1, 1936 or unless they were used solely in the United States and not elsewhere.

While the prohibition against the use of these trademarks applies equally to sales in Puerto Rico as well as abroad, no one pretends that the purpose of the legislation was other than to try to give certain established distillers in Puerto Rico a preferred position in the sale of their rum to consumers in the United States.

Section 44(b) of the Act points out this purpose with finality. The opinion of the District Court shows that this bulk shipment provision of the statute is not applicable within the Island of Puerto Rico, but merely prevented shipments of rum in bulk to places outside of Puerto Rico (R. 102):

"It will be noted that such rum may be legally sold in Puerto Rico in bulk or barrels, but this Act undertakes to deny the plaintiff's right to export it in like containers."

A. The memorial addressed to the Puerto Rican legislature.

Respondent's brief (p. 19) mentions a Memorial or petition addressed by certain Puerto Rican distillers to their legislature. (See also Intervenor, brief, p. 29.) A copy was attached to petitioner's bill of complaint (R. 39-55). It urged the legislature to make permanent the temporary laws of May 15, 1936 (Act No. 115) and June 30, 1936 (Act No. 6), which are quoted in petitioner's main brief, pages 6, 7, 8. It contains a direct attack upon petitioner (although not by name), the admission that the continental United States market is the one aimed at, a legal argument to resolve doubts expressed concerning the constitutionality of this legislation, and contains such phrases as these (R. 45-46):

"Should *this foreign producer* be allowed to come to Puerto Rico he will enjoy a singular advantage because of his world famous name * * *."

"* * * *This foreign producer* has already attempted to locate within the boundaries of the continental United States in the city of Philadelphia, where he failed in his plans.

"It has been argued also that the *foreign producer*, if he is not allowed to locate here, will go elsewhere in American territory. * * * So far as another attempt to locate in continental United States is concerned, it can be definitely stated that such an attempt will not be made by *the foreign producer*. * * *" (Italics supplied)

This Memorial signed by intervenor, among others, and which resulted in the passage of the offending statute, refers solely to appellee who was originally located in the City of Philadelphia (R. 141).

Petitioner and petitioner alone is aimed at by a deceptive and craftily drawn statute. The purpose was to hit petitioner only but to make arguable the contention that it was not. This is not denied except for the half hearted assertion (Respondent, brief, p. 72) that "it does not appear that any other alien manufacturer whose trade-marks had not been used in Puerto Rico prior to February 1, 1936, appears as yet to have challenged the Act, * * *." Petitioner may distill any amount of rum in Puerto Rico so long as it does not call it "Bacardi" rum in the United States. It is not a statute aimed at foreign corporations. Several of these produce rum in Puerto Rico. It is not a statute aimed against trade-marks generally which are not indigenous to Puerto Rico. Many such marks are now legally in use on rum produced there, saved by retroactive legislation embodying an arbitrary date. It is a statute to prevent petitioner from using its particular trade-marks because the legislature believes that consumers in the United States are more likely to purchase "Bacardi" rum made in Puerto Rico than they are to purchase a competing brand not so highly reputed.

Whether the legislature is right or wrong in its opinion—and the statistics of shipments of rum appearing in Appendix C to our main brief show that this is not wholly true—it has far overstepped the limits of its power. Nothing in the Organic Act gives it authority to coddle a favored few distillers in the markets of the United States, a jurisdiction far removed from its legislative sphere. The legislature is attempting to exercise more than "local" powers and the attempt must be restrained as an improper exercise of its limited police power.

B. The Commerce Clause is applicable to Puerto Rico.

The respondent (Brief, pp. 32-37) is quite certain that the commerce clause of Art. I, Sec. 8, cl. 3 of the Constitution can have no application to Puerto Rico. The intervenor (Brief, pp. 52-59) is more doubtful but thinks that, in any event, the effect of the statute upon interstate commerce is incidental. (pp. 56-57) Both rely upon the word "states" in that clause as a restrictive term which may not be enlarged to include territories.

Since our main brief was filed, we have noted the case of *Inter-Island Steam Navigation Co. v. Hawaii*, 305 U. S. 306, affirming 96 F. (2d) 412. In that case a steamship company doing an inter-island business in the territory of Hawaii but carrying some goods consigned to foreign ports, attacked a territorial statute levying fees upon public utilities. The attack failed but both courts had occasion to consider the application of the commerce clause to the territory of Hawaii. The Circuit Court of Appeals for the Ninth Circuit said (96 F. (2d) 412, 416-417) :

"Inasmuch as it has been said that 'Regulation and commerce among the states both are practical rather than technical conceptions, and, naturally, their limits must be fixed by practical lines' (*Galveston, Harrisburg, etc., Ry. Co. v. Texas, supra*, 210 U. S. 217, 225, 28 S. Ct. 638, 639, 52 L. Ed. 1031), we think, as a practical matter, a territory must be considered in the same category as a state, and that the commerce clause is applicable to such territory. If that point was not expressly so decided in *New Mexico ex rel. McLean v. Denver & Rio Grande R. Co.*, 203 U. S. 38, 27 S. Ct. 1, 51 L. Ed. 78, and *Hanley v. Kansas City Southern Ry. Co.*, 187 U. S. 617, 23 S. Ct. 214, 47 L. Ed. 333, it was so implied. Cf. *Lugo v. Suazo*, 1 Cir., 59 F. 2d 386, 390."

Mr. Justice Black, speaking for this Court, stated (305 U. S. 306, 313-314) :

"Under the Constitution, Congress has the power to regulate interstate commerce. Therefore, assuming—but not deciding—that petitioner is engaged in interstate and foreign commerce, Congress has exercised its power in the present case by permitting the Territory to act upon this commerce by the imposition of the contested taxes. The imposition of these taxes under an Act to which Congress expressly subjected petitioner does not violate the Commerce Clause.

Congress had the power to subject petitioner to this tax by virtue of its authority over the Territory, in addition to its power under the Commerce Clause."

The territory of Hawaii, like that of Puerto Rico is governed by virtue of an Organic Act passed by Congress. If the commerce clause applies to Hawaii, it applies equally to Puerto Rico.

Regardless of this question, however, respondents have not answered the proposition in our main brief, pages 62-68, that the transportation of rum from state to state of the United States, until it reaches the place of ultimate sale and consumption, is unquestionably "commerce" within the constitutional meaning and protection. It is an inseparable part of the traffic originating in Puerto Rico and the commerce clause applies to the whole movement regardless of local law. *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 58:

"Nor will it do to say that the state law acts before the interstate transaction begins. It seizes upon the grain and controls its purchase at the beginning of interstate commerce. *Pennsylvania R. R. Co. v. Clark Brothers Coal Mining Co.*, 238 U. S. 456, 468."

See also *Curran v. Wallace*, 306 U. S. 1, 10.

We shall not repeat the arguments in our brief heretofore filed showing that the effect of the Puerto Rican statute upon this commerce is direct and not incidental. There is a collision here between the police power of Puerto Rico and the commerce clause. It needs no citation of authority to prove that, in such a conflict, the police power relied upon by respondents cannot prevail over the Constitution of the United States.

C. The Twenty-First Amendment to the Constitution does not aid respondents.

The intervenor does not rely upon the Twenty-First Amendment as enlarging the powers of Puerto Rico (Except incidentally, brief, p. 29). The respondent contends (Brief, p. 31) that the amendment "leaves the states and territories wholly free to adopt and enforce such regulations as they may see fit concerning the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors."

We agree with this statement and with the holding of the cases cited in support of it, such as *State Board of Equalization v. Young's Market Co.*, 299 U. S. 59 and *Mahoney v. Joseph Triner Corp.*, 304 U. S. 401. But the present case before this Court has nothing whatever to do with the importation of intoxicating liquors into Puerto Rico or into any other place which prohibits or restricts importation. This case is concerned with rum manufactured in Puerto Rico and then exported from the Island.

It is perfectly true that the Amendment in question has abrogated the commerce clause with respect to "importations" of liquors into a state (*State Board of Equalization v. Young's Market Co.*, *supra*, at p. 62) and to that extent has increased the scope of local

police power. It has nothing to do with "exportation" from a state or territory. It is not true that the Amendment touches the present situation at any point or in any way supports the action of Puerto Rico in passing the laws here under attack.

D. The conflict with due process and equal protection.

The intervenor argues that there has been no threatened taking of petitioner's property by the law in question. (Brief, pp. 23, 24.) This is apparently upon the theory that petitioner may still do business in Puerto Rico after compliance with the law. But the record shows and the trial court found (R. 112-114) that petitioner would suffer great loss of business and damage if it were compelled to operate under trade marks other than its own and to forego making shipments of rum in bulk from Puerto Rico.

The respondent's brief says as little as possible directly about either due process or equal protection, although a great deal about curing "evils" attendant upon the sort of free competition to which we had supposed the United States to be long committed as a matter of considered policy. (See, for example, brief, pp. 66-73.)

The intervenor, on the other hand, makes the curious statement (Brief, p. 32) :

"Petitioner's argument proceeds upon the theory that the legislation applies only to foreign manufacturers. This is wholly erroneous. The legislation forbids the use of foreign labels by any manufacturer."

Certainly the argument in our main brief upon equal protection of the laws, pages 36-48, made no contention that the Puerto Rican laws apply only to foreign

manufacturers. As we pointed out, other corporations organized outside of Puerto Rico are manufacturing rum there but are not affected by this legislation. (R. 173.) What we did say was that the laws attacked applied only to petitioner, a corporation of the State of Pennsylvania. Nor does this legislation, as intervenor says, forbid the use of foreign labels by any manufacturer. At least three other corporations are using such labels without violating the law. (Finding 20, R. 114.)

On the contrary, the prohibitions in the legislation are much more specific and much better aimed. The use of the so-called foreign labels is forbidden only if the user was not actually producing rum in Puerto Rico on February 1, 1936. Both petitioner and the respondents agree that the purpose was to exclude petitioner's trade marks from competition, in the United States market, with trade marks, foreign or domestic, used there by other Puerto Rican distillers. In theory, at least, this would make it easier for the other distillers to sell their rum in the United States because the Bacardi marks, already known there, would be eliminated.

Neither the respondent nor the intervenor has offered any explanation of why the legislature weakened and, in Section 7 of Act 149 of May 15, 1937 (quoted in our main brief, page 9), allowed a trade mark already in use in the United States to be used on Puerto Rican rum, even though the user was a new distiller, not in business on February 1, 1936. We do not of course have the answer to this phenomenon, which has the effect, on the Puerto Rican theory, of still providing some real competition in the United States market. From our point of view, this Section 7 merely intensifies the discrimination practiced against

petitioner, the only manufacturer whose product must be marketed under an assumed name. Certainly the exemption contained in Section 7 completely refutes the argument made by the intervenor about classifications by well and lesser known trade names (Brief, pp. 35-37.)

The argument of the intervenor on classification ignores realities. Here the legislature has intentionally carved out a special class, or sub-class, narrow enough to contain only petitioner. In support of this action it is not enough to say that there may be a classification based upon trade^{*} marked as against non-trade marked goods (*Old Dearborn Co. v. Seagram Corporation*, 299 U. S. 183) or a classification to continue a long existing differential between well known and less known brands of milk (*Borden v. Ten Eyck*, 297 U. S. 251). What is needed and cannot be found, is a justification for a discrimination between the well known^{*} name and trade marks of petitioner on the one hand and all other trade marks, whether well known or not, on the other.

The respondent seeks to avoid the violations of due process and equal protection by indirection and by the argument that Puerto Rico has practically unlimited power to legislate for the regulation of the liquor industry. (Brief, pp. 30-31, 37, 56-58.) The cases relied upon, so far as they deal with intoxicating liquors, are the familiar ones under the Twenty-First Amendment (*State Board of Equalization v. Young's Market Co.*, 299 U. S. 59; *Mahoney v. Joseph Triner Corp.*, 304 U. S. 401); those illustrating the right of a state to refuse a license entirely (*Premier-Pabst Co. v. Grosscup*, 298 U. S. 226); and the case of *Ziffrin v.*

*The intervenor uses the words "fame and notoriety" (Brief, p. 37).

Reeves, 308 U. S. 132, where *all* distillers in the State of Kentucky were required to ship their product by railroads or railway express companies. If the Kentucky statute had limited transportation service to one out of many common carriers, or had permitted all common carriers but one, for example the Louisville & Nashville Railroad, to render such service, a situation somewhat analogous to this case would have been presented.

As we stated in our main brief, page 51:

"Respondents cannot cite any cases which will support the theory of unlimited legislative license to coerce a liquor manufacturer in the position of this petitioner. The leading case on regulation of intoxicating beverages expressly points out the limits beyond which state regulations may not go." (Citing and quoting from *Mugler v. Kansas*, 123 U. S. 623, 663-664.)

That statement still holds true. Furthermore it is perfectly apparent that these statutes are not regulations of the liquor industry *qua* liquor. They are attempts to regulate the use of trade marks and trade names. We repeat that they promote neither safety, health, morals, good order nor the general welfare. They are in aid of private greed and not public weal. They are "an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date." (*Mayflower Farms, Inc. v. Ten Eyck*, 297 U. S. 266, 274.) They enact into law that species of special privilege sought by all selfish persons in all types of industry.

II.

**The Conflict with the Inter-American Convention for Trade-Mark
and Commercial Protection.**

The intervenor's brief, pages 38 *et seq.*, treats this question on the merits and attempts a direct answer to the contentions made in our opening brief, pages 23-33. This being so, there is a conflict of argument which this Court will have to resolve and no reply is necessary, except to one statement made by intervenor. (Brief, p. 49.) It is said that by registering a trade mark in one of the countries which has adopted the treaty, a corporation could force itself upon any contracting country which had denied it the privilege of doing local business.

No such contention as this has been or is made by petitioner. The ownership or right to use a trade mark is not the same thing as a license to engage in business and does not carry with it any such license. What we do say is that this treaty guarantees to petitioner, who has the right to use certain trade marks, first registered in Cuba and thereafter admitted to registration and used in the United States and Puerto Rico, that these marks, and hence petitioner, shall not be discriminated against by reason of the very fact of the foreign origin and use. What the treaty does is to require that each signatory country permit the free use of lawfully acquired trade marks in the course of lawful trade.

To fully understand the position of Puerto Rico here, it is necessary to go back to the original discriminatory statute of May 15, 1936 (Act No. 115). That act provided:

“If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or show-

ing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico."

"No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; Provided, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits, manufactured in Puerto Rico on February 1, 1936; and (2) such restrictions shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

We think it is conceded that these words were aimed at petitioner and its Cuban trade marks. We think it is likewise conceded that the law in permanent form, Act No. 149 of May 15, 1937, had an exactly similar purpose although by that time the legislature had dropped the reference to "distilled spirits of a foreign origin", "nationally or internationally known". The final law (Section 44) condemns the use of:

"any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, * * * used previously in whole or in part * * * anywhere outside the Island of Puerto Rico;" et cetera.

There is no question that the legislature in both instances sought to kill the Bacardi trade marks and

those only. We are perfectly willing to grant that the animus displayed by the Puerto Rican legislature was not directed against these trade marks because they were Cuban rather than, let us say, British. The legislature attacked them because they, as foreign marks, were widely and favorably known outside of Puerto Rico. This type of discrimination is one of the things that the Inter-American Convention was designed to prevent.

Respondents argue at length that the words "protect" and "protection" in the treaty refer only to acts of piracy by competitors. We prefer to think that, for the reasons stated in our first brief, they are terms broad enough to restrain a dependency of the United States from refusing recognition to trade marks of Cuban origin simply because they have built up a widespread good will.

The argument by respondent (Brief, pp. 45-47, 50-55) that to apply the treaty in this case for petitioner's protection would repeal the registration provisions of the Federal Trade Mark Act of 1905 (c. 592, 33 Stat. 724, 725, Title 15, U. S. C. Sec. 81) seems beside the point. This is especially true since petitioner's trade marks have been in actual use in Puerto Rico and the United States for many years and are properly registered there. (Finding 7, R. 110.)

III.

The Conflict with the Federal Alcohol Administration Act.

Respondent suggests (Brief, pp. 38-39) that this question is not properly here because petitioner did not assign any cross error to the failure of the District Court to find in its favor in this point. There was no necessity for the assignment of cross errors on appeal to the Circuit Court of Appeals. Errors

can be assigned only to the decree of the court and that of the District Court was entirely favorable to petitioner. Cross errors are not assignable to the reasons or opinions supporting such a favorable decree. The issue of conflict with the federal statute was briefed and argued in the Circuit Court of Appeals and was decided by that court.

The briefs of both respondent (pp. 38-42) and intervenor (pp. 60-64) deny the presence of a conflict between the federal law and the Puerto Rican. Yet neither can explain why petitioner's label, approved under federal law (which requires it to contain adequate identification of the maker and his brand and prohibits it from creating a misleading impression even by omission) is not in violation of the Puerto Rican laws.

Petitioner's brand and the distinctive part of its corporate name are both trade marks, first registered in Cuba and used all over the world as well as in Puerto Rico. These must be shown on the label in order to comply with the regulations under the Alcohol Act. (R. 331, 333.) To omit them from the label would be to "create a misleading impression". (R. 342.) And yet the trade-mark (the bat) on the label and the corporate name are within the express prohibitions of Section 44 of the Puerto Rican law No. 149, May 15, 1937. No amount of argument can remove this conflict. As for the prohibition against bulk shipments, it must stand or fall as an integral part of the trade mark prohibition.

Respondent concedes that petitioner has a right to use its corporate name on rum produced by it in Puerto Rico; indeed counsel say that petitioner expressly is required to use its name because Section 40 of the Puerto Rican statute, quoted on page 41 of Respon-

dent's brief, states that the label shall contain *the name of the bottler or canner*. There is no reference to the name of the distiller or rectifier. We doubt if the Puerto Rican government could be bound by this concession which is made for the first time in this Court. The proponents of this legislation have been anxious that petitioner's "famous name" shall not be applied to its product, and a private right of enforcement of the prohibition is provided by Section 97a. In any event it is the name of the manufacturer that is important, in this case. We doubt if the words of Section 40 can override the express prohibitions of Section 44 that no "trade-mark, brand, trade name, commercial name, *corporation name* or any other designation" if used previously "in whole or in part, directly or indirectly or in any other manner anywhere outside the island of Puerto Rico" may appear upon any distilled spirits manufactured in Puerto Rico unless used there on or before February 1, 1936. The essential part of Petitioner's corporate name—the word "Bacardi"—was used outside of Puerto Rico before February 1, 1936 and it is therefore, we should suppose, within the ambit of Section 44.

Intervenor makes the same concession (Brief, p. 23) where it says "The Puerto Rican law does not deny petitioner the right to do business in Puerto Rico nor to sell lawfully distilled rum under the Bacardi trade name".

Petitioner does not consider it prudent to rely on these belated concessions without a judicial declaration that the construction of the Act now advanced by Respondent and Intervenor is correct.

Within the current year this Court has considered the effect of a direct conflict between the statute of a state and an order of a federal commission. In *Man-*

rer v Hamilton, 309 U. S. 598, a Pennsylvania statute denied the use of the state highways to a motor vehicle carrying any other vehicle over the head of the operator. The Interstate Commerce Commission had held that this type of operation was permitted by its regulations, in the case of motor carriers subject to its jurisdiction. This Court took due notice of the conflict in a long and exhaustive opinion but held that Congress had reserved to the states, and withheld from the Commission, the regulation of "sizes and weights", which were involved in the case. Had the opinion found that the Commission was acting within the scope of its authority, the state would have been compelled to yield.

In the present case the Federal Alcohol Administration Act, Section 5(e) requires that all distilled spirits moving in commerce shall be labeled in accordance with the Act (Quoted, Appendix B of our original brief) and that a certificate of label approval shall be first obtained from the administrator in accordance with regulations to be prescribed by him. Petitioner's label has been approved in accordance with Section 5(e) and the regulations under it and petitioner has received a certificate of label approval from the administrator. (R. 274-277.)

Respondents do not challenge the power of the administrator to approve this label (Shown on page 5 of our original brief) or to issue his certificate of approval. They argue that the label violates the provisions of Article 44 of the Puerto Rican law of May 15, 1937; and yet they say that there is no conflict with the federal act and regulations, even though the Puerto Rican law will not permit the label to be used upon rum shipped to the United States. In our view the conflict in this respect is direct and primary and cannot be explained away.

The whole policy of Congress in enacting legislation of this character was, subject to the restraints of the Twenty-first Amendment not applicable here, to gather into its own hands the full power over the transportation of intoxicating liquors from place to place. What Puerto Rico may do in regulating local consumption is one thing, but it lacks the power to flout an act of Congress in matters dealing with exportation and sale beyond its boundaries.

IV.

Petitioner is Not Estopped.

The intervenor's brief, page 15, argues that petitioner is estopped to question the validity of the Puerto Rican statutes because it applied for and received a permit to manufacture thereunder. Respondent does not argue this point, merely noting it on page 3 of the brief.

This particular argument has been raised at intervals during the case and apparently abandoned at others. The intervenor presented it in opposition to the motion for a preliminary injunction but did not brief it when the case was submitted to the trial court on the merits. It was raised again in the Circuit Court of Appeals but not mentioned in the oppositions to the granting of the writ of certiorari. Neither the District Court nor the Circuit Court of Appeals passed upon the question.

Petitioner did not apply for or receive any permit under Act No. 149 of May 15, 1937, the only statute here attacked. It did apply for a permit to manufacture on March 31, 1936, under the provisions of Act No. 38 of 1935. (R. 312-313.) At that time the Puerto Rican statutes did not discriminate against petitioner or its trade-marks. On April 6, 1936 the treasurer of

Puerto Rico replied, setting out certain additional requirements for the issuance of the license (R. 313-315). The non-discriminatory act of 1935 was still in effect.

On May 15, 1936, Act No. 115 was approved, to remain in effect only until September 30, 1936. It contained the first reference to distilled spirits of foreign origin, nationally or internationally known. While this temporary act was in effect, and on July 16, 1936, petitioner, having complied with the requirements for a permit laid down by the treasurer, again requested that it be issued. This letter stated, in part, (R. 316-317) :

“This petitioner respectfully informs the treasurer that in its opinion law No. 115 of May 15, 1936 contains provisions which are unconstitutional or otherwise illegal, and the applicant therefore reserves its constitutional right to submit to the courts the validity or legality of any section a part of this or any other law or regulation whenever it deems it advisable.”

On July 20, 1936 rectifier's and distiller's permits were issued to petitioner (R. 288, 315).

On September 28, 1936, law No. 6 of June 30, 1936 became effective, amending the Act of May 15, 1936 and continuing the provisions discriminating against petitioner until September 30, 1937. This law did not become effective until 90 days after its passage, because passed at a special session by less than a two-thirds vote. (Sec. 34 of Organic Act of Puerto Rico, Title 48 U. S. C., sec. 827, and Respondent's brief, p. 5, Note 4*). Petitioner (R. 315) then inquired whether new permits were necessary. It was advised by the

*Intervenor's brief, pp. 8 and 19, incorrectly states the effective date to be July 1, 1936.

treasurer, September 29, 1936, (R. 315-316) that new permits were not necessary and no additional permits were in fact issued, nor have the original ones been withdrawn or revoked.

The first permanent act affecting petitioner was No. 149, May 15, 1937, against which this suit was brought. The others, not here attacked, were, by their terms, temporary and *experimental in their nature* (See respondent's brief, p. 4) to remain in effect only for short times. Petitioner never sought to receive or received a permit under the permanent Act of May 15, 1937. It properly waited to attack the discriminatory provisions until such time as the legislature made up its mind to retain them and then petitioner acted with reasonable promptness, filing its bill for an injunction on July 31, 1937.

Even if petitioner had sought and received a license to manufacture under the Act of May 15, 1937, it would still not be estopped to question the constitutionality of that Act. *Power Manufacturing Co. v. Saunders*, 274 U. S. 490; *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389; *W. W. Cargill Co. v. Minnesota*, 180 U. S. 452; *Union Pacific Railroad Co. v. Public Service of Missouri*, 248 U. S. 67.

In the *Cargill* case, above cited, it was contended that the acceptance of a license would bind the corporation to observe all the laws and regulations under which the license was issued, even though same might be unconstitutional. As to this the Court said, page 468:

“The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute or with any regulations prescribed by the state Railroad and Warehouse Commission that are repug-

nant to the Constitution of the United States. A license will give the defendant full authority to carry on its business in accordance with the valid laws of the State and the valid rules and regulations prescribed by the Commission. If the Commission refused to grant a license, or if it sought to revoke one granted, because the applicant in the one case, or the licensee in the other, refused to comply with statutory provisions or with rules or regulations inconsistent with the Constitution of the United States, the rights of the applicant or the licensee could be protected and enforced by appropriate judicial proceedings."

None of the cases relied upon by the intervenor (Brief, pp. 15-22) touch a situation where permits were issued prior to the passage of the Act complained of, and where no revocation of these permits was ever attempted. There can be no estoppel in this case.

Respondent argues (Brief, p. 13, Note 8) that petitioner must have known, when it was completing its plans for manufacturing rum in Puerto Rico, that the legislature was about to pass an act (No. 115, May 15, 1936), a portion of which was aimed against petitioner. There is nothing in the record to show the petitioner did know of this fact but respondent says that the bill must have been introduced as early as March 21, 1936, and that, as introduced, it operated as a sort of constructive notice of coming events.

The Act of May 15, 1936 was a long statute dealing with all phases of the liquor industry in Puerto Rico and only incidentally, in parts of Section 41, with the prohibition against famous names. It was introduced approximately four weeks after petitioner first entered Puerto Rico (R. 140-141). There is nothing in the record to indicate that the offending provisions of the statute were contained in the bill as introduced and

petitioner is informed that such provisions were offered by way of amendment during the closing days of the legislative session.

At any rate, prior to the date of the passage of the Act, petitioner had expended about \$45,000 (R. 6), had rented a building, and moved certain equipment and materials from Pennsylvania to Puerto Rico (R. 140, 141, 143). Even if the offending provisions of the statute had appeared in the bill as originally introduced, petitioner would have been justified in continuing its investment rather than to take a substantial loss and leave the Island.

The complete answer to respondent's argument, for whatever the argument is worth, is that no man is compelled at his peril to guess the outcome of pending legislation. *Untermeyer v. Anderson*, 276 U. S. 440, 445-446. As the Court there said: "The future of every bill while before Congress is necessarily uncertain. The will of the lawmakers is not definitely expressed until final action thereon has been taken."

CONCLUSION.

We have not heretofore replied directly to the many assertions, particularly in respondent's brief, that the provisions of the law of May 15, 1937 which discriminate against petitioner, are for the benefit of Puerto Rico and its people generally. This thesis that the legislation was really for the general welfare, has always seemed to us untenable, entirely apart from the question of power to legislate.

It must be borne in mind that the legislation's effect is to restrict sales in the United States market to rum which bears identifying marks not disapproved by Puerto Rico. Necessarily it is to the interest of Puerto Rico to sell as much rum as possible in that market

since tax revenue accrues in direct proportion to the amount sold and employment of labor in Puerto Rico is increased to some extent as sales increase.

It is hardly possible to infer that if petitioner is barred in Puerto Rico from selling rum in the United States under identifying marks known to the public, the sales lost by petitioner would immediately accrue to its competitors among the distillers of Puerto Rico. But unless we make this assumption, Puerto Rico is actually going to lose money through the enforcement of this law.*

*The annual report of the treasurer of Puerto Rico to the governor of the island for the fiscal year 1938-39, page 27, shows revenue derived from Puerto Rican rum shipped to the United States, all accruing to Puerto Rico, as follows:

"Federal Taxes.—Federal taxes paid on Puerto Rican rum shipped to the continental United States amounted to \$1,631,628.49 during the year, which represents an increase of \$229,170.16 over the income of \$1,402,458.33 from this source during the previous fiscal year. The steady increase in revenues from this source since July 1, 1935 continues, which shows that the local rum industry is more than ever making sure and important inroads into the continental markets. An interesting study of this progress may be made from the following table, which shows monthly income from Federal taxes, by fiscal years, which accrue to the Insular Government:

Month	1935-36	1936-37	1937-38	1938-39
July	\$4,030.99	\$38,928.90	\$177,899.20	\$103,196.41
August	10,797.74	47,364.33	103,833.00	78,856.10
September	22,715.41	51,674.78	133,874.00	108,928.74
October	38,858.18	71,956.10	159,136.80	137,138.51
November	56,220.76	86,729.28	188,794.00	205,638.46
December	48,397.96	109,751.19	175,704.96	205,374.26
January	61,653.89	190,542.69	54,565.70	145,349.62
February	26,317.88	94,704.96	71,388.53	91,965.40
March	18,722.70	80,777.20	115,302.52	94,026.33
April	24,391.36	56,510.00	45,221.70	81,692.27
May	22,214.36	52,234.20	74,095.10	154,762.05
June	21,258.92	57,694.40	102,642.82	224,700.34
	\$355,579.65	\$938,968.03	\$1,402,458.33	\$1,631,628.49

(Continued on following page)

The increase of exports of cases of rum to the United States, from year to year while petitioner has been operating under the injunction of the District Court, as shown in our original brief, Appendix C, indicates that Puerto Rico will continue to derive larger and larger tax revenues from this source. Only a few distillers in the Island, who fear to compete in the open market, have complained and they can hardly be said to represent the general welfare of Puerto Rico, which the legislature may legitimately foster. On the contrary, they represent only their own selfish interests, which should not be permitted to dominate a free market across the ocean from their distilleries. It is significant that originally there were two intervenors who sought a continuance of this attempted legislative monopoly. One of these has abandoned his opposition and has withdrawn from the case.

Petitioner asks that the judgment of the Circuit Court of Appeals be reversed and that the decree of the District Court be reinstated.

Respectfully submitted,

EDWARD S. ROGERS,
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JEROME L. ISAACS,
Attorneys for Petitioner.

There were approximately 663,317.20 proof gallons of Puerto Rican rum shipped to the Continent during the year, on which the Federal tax of \$2.25 per proof gallon was paid, totalling \$1,492,465.62. The Federal Rectification Tax of 30 cents per proof gallon paid on the rum shipped during the year amounted to \$139,162.87, making the total of \$1,631,628.49."

This is a printed report of 121 pages and charts which will be found, among other places, on file with the Interior Department, Division of Territories and Island Possessions.

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F I L E D

APR 6 1940

BUCKLEY
BACARDI

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. [REDACTED]

21

BACARDI CORPORATION OF AMERICA, Petitioner,

v.

RAFAEL SANCHO BONET, TREASURER, Respondent,
and

DESTILERIA SERRALLES, INC., Intervenor-Respondent.

BRIEF FOR INTERVENOR-RESPONDENT, DESTILERIA SERRALLES, INC., IN OPPOSITION TO PETITION FOR CERTIORARI.

✓ DAVID A. BUCKLEY, JR.,
Attorney for Intervenor, Respondent.

Of Counsel:

H. RUSSELL BISHOP.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1939.

No. 774.

BACARDI CORPORATION OF AMERICA, *Petitioner*,
v.

RAFAEL SANCHO BONET, TREASURER, *Respondent*,
and

DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

BRIEF FOR INTERVENOR-RESPONDENT, DESTILERIA SERRALLES, INC., IN OPPOSITION TO PETITION FOR CERTIORARI.

OPINION OF THE COURTS BELOW.

The opinion of the District Court of the United States for the District of Puerto Rico is not officially reported. It is in the transcript of the record at pages 95-116. The opinion of the Circuit Court of Appeals (R. 429-443) is reported in 109 F. (2d) 57.

QUESTIONS PRESENTED.

The petition for certiorari does not state the questions presented, as such. They may be deduced, however, from the specification of errors found on pages 17 and 18 of the petition and brief and may be stated as follows:

1. Are sections 44 and 44(b) of the Spirits and Alcoholic Beverages Act of Puerto Rico, as amended, invalid because they destroy substantive rights in trade-marks guaranteed to petitioner by the Inter-American Convention and Protocol for trade-mark and commercial protection?
2. Are those sections of the said act invalid because they are in conflict with the Federal Alcohol Administration Act and regulations issued thereunder?
3. Does the Inter-American Convention and Protocol for trade-mark and commercial protection preclude the Puerto Rican Legislature from enacting the legislation which is attacked by the petitioner?
4. Do these sections of the Puerto Rican Spirits and Alcoholic Beverages Act violate the equal protection and due process clauses of the Organic Act of Puerto Rico and the fifth amendment to the Federal Constitution?
5. Does the Puerto Rican Spirits and Alcoholic Beverages Act violate the commerce clause of the Federal Constitution?
6. Was the enactment of sections 44 and 44(b) of the Puerto Rican Spirits and Alcoholic Beverages Act of Puerto Rico a valid exercise of the police powers of the Puerto Rican Legislature?

STATEMENT OF THE CASE.

The petition is for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit (R. 429-443; 109 F. (2d) 57) reversing the judgment of the District Court of the United States for the District of Puerto Rico (R. 95-116) and remanding the case to that Court with instructions to dissolve the injunction and to

dismiss the bill of complaint, at petitioner's cost. The mandate was stayed on January 18, 1940 (R. 443).

The Bacardi rum business was established in Cuba in 1862. It was incorporated there as Compania Ron Bacardi, S.A., in 1919 and that corporation has ever since conducted and still conducts a business in the production of alcoholic liquors, principally rum. The rum thus produced is sold under various tradenames including the word "Bacardi," "Bacardi y Cia," the representation of a bat in a circular frame, and certain distinctive labels (R. 2, Finding 6; R. 110).

Compania Ron Bacardi, S.A. has registered among others, seven trade-marks in the United States Patent Office, all of which said registrations were made during the period 1933 to 1936 (R. 25-34) and are valid and subsisting. Four of these seven trade-marks were registered in the office of the Executive Secretary of Puerto Rico on April 10, 1935, as follows:

No. 3916—Bacardi

No. 3917—Bat Trade-mark

No. 3918—Ron Bacardi Superior Carta de Oro

No. 3919—Ron Bacardi Superior Carta Blanca

Bacardi rum, prior to prohibition was sold in large quantities in the United States and in Puerto Rico, and after the repeal of prohibition the sales were resumed and have continued in both places to the present time. All of the aforesaid sales were made under the above-described tradenames, and later, trade-marks (R. 2-4; finding 7; R. 110).

The petitioner is a Pennsylvania corporation, organized April 24, 1934. On June 8, 1934, the petitioner acquired from Compania Ron Bacardi, S.A., the right to use the registered trade-marks of the Cuban Company, and also obtained disclosures of the secret processes and methods of producing Bacardi rum. Pursuant to such agreement it brought to Puerto Rico in 1936 certain technicians who have instructed petitioner's employees in the use of said processes and methods, and who have supervised petitioner's manufacture of rum in Puerto Rico.

The petitioner first did business in Pennsylvania, but on March 28, 1936, its basic permits to warehouse, rectify, and bottle alcoholic beverages in Pennsylvania which were still in effect, were amended by the Federal Alcohol Administration to enable the petitioner to operate in Puerto Rico (R. 4-5; Finding 15; R. 115). The labels used by the petitioner in Puerto Rico have been approved by the Federal Alcohol Administration.

Petitioner on March 31, 1936, received from the Executive Secretary of Puerto Rico a certificate of registration as a foreign corporation and received from the same official on April 6, 1936, a license to do business in Puerto Rico which license has been renewed from year to year (R. 5; Finding 10, R. 110, 111). It rented a building (with option of purchase) and moved certain equipment and materials from Pennsylvania and Cuba and between April 6, 1936, and May 15, 1936, expended about \$45,000.00 (R. 6). This plant produced the rum "Ron Hatuey" which was sold locally in Puerto Rico. Petitioner also secured a permit to produce and sell the rum "Consumo Corriente," likewise sold locally.

The Treasurer of Puerto Rico issued a permit for rectifying distilled spirits and to sell and offer for sale alcoholic beverages so produced, which permit was issued on July 20, 1936. (R. 288.) It stated:

"This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the Law now in Force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law or Regulations."

"This permit is personal and untransferable."

On May 15, 1936, namely, *sixty-five days prior to the issuance of the permit to the petitioner*, there was approved Law No. 115, the title of which reads as follows:

"To Provide Revenues for the People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 33, Approved July 30, 1935, Entitled 'An Act to Provide Revenue for the People of Puerto Rico by Levying Excise Taxes on Alcohol and Alcoholic Beverages, and Licenses for the Manufacture and Sale Thereof; to Regulate the Manufacture, Importation, and Sale of Alcohol and Alcoholic Beverages; to Impose Penalties for Violations Hereof; to Repeal Act No. 1, Approved June 29, 1935; and for Other Purposes'; and for Other Purposes."

Section 41 of said Act provided for the issuance of permits. Subsection C(1) provided that permits should be issued to persons who on February 1, 1936, possessed a license or permit. Section C(2) provided for the issuance of permits to other persons who should comply with the requirements therein set forth. Applicants were required to make the statement that they had no intention to violate clauses (h) and (i) which read as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name or trade-mark, the proper name of the manufacturer thereof, such name shall not in any manner or form whatever appear on the labels for any distilled spirits of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.

(i) The production capacity of existing distilleries, manufacturing plants and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title.

Clause (g) referred to in clause (1) reads as follows:

(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade-name or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade-name or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

Act No. 115 was repealed by Act No. 6 of the Third Special Session of the 13th Legislature. Act No. 6 was approved June 30, 1936; took effect on July 1, 1936 and was by its terms to expire on September 30, 1937. The title of the Act stated that it was for the purpose of raising revenue by levying internal revenue taxes on alcoholic spirits and beverages, and to regulate the production, importation and sale of alcohol spirits and alcoholic beverages.

Section 44 of Act No. 6 provided in part:

"Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, that this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; * * *."

This section also forbade the exportation from Puerto Rico of rum in containers of more than one gallon capacity.

Act No. 149, passed during the Regular Session of the Puerto Rican Legislature, was approved on May 15, 1937, became effective on August 13, 1937, and was the last statute enacted providing for a comprehensive regulation of the liquor industry in Puerto Rico. It consists mostly of amendments to Act No. 6.

Section 1 of Act No. 6 was amended by adding the following:

"It has been and is the intention and policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 40 of Act No. 6 was amended to provide explicitly the size of the letters which should be used on labels. The amendment is set forth in full in the appendix, *post p. 32.*

Section 44 of Act No. 6 was amended so that in its final form it reads as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade-name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade-name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

A new section, 44(b) was added which reenacted the prohibition against the shipping of rum from Puerto Rico in containers holding more than one gallon, except in the case of rectifiers who wished to withdraw from the business and whose stock on hand did not exceed 30,000 gallons.

Section 44(b) is set out in full in the appendix, *post pp. 35-36.*

A new section 97(b) providing for appeals to the courts was added. See appendix, *post pp. 36-37.*

Section 6 of Act 149 made Act No. 6, as amended, a permanent law.

Section 7 of Act No. 149 provided:

"In regard to trade-marks only, the provisions in the 'directing' part of Article 44 of Law No. 6, approved on June 30, 1936, shall be applicable as is hereby amended, to those trade-marks that have been used exclusively in continental United States by a distiller, rectifier, manufacturer, or packer of distilled spirits prior to February 1st, 1936, provided, that said trademarks were not used in whole or in part by a distiller, rectifier, manufacturer or packer of distilled spirits outside of continental United States at any time prior to said date."

During the period that Act No. 6, which forbade the marketing of Puerto Rican rum under foreign labels or trade-marks, was in effect, it is stated in the complaint (R. 11) that:

"All stocks of the high grade rum accumulating, were in the process of maturing for *marketing under the regular Bacardi rum label, trade-marks and brands which the plaintiff is authorized by the Cuban Company to use* and which are registered in the United States Patent Office, and in the office of the Executive Secretary of Puerto Rico." (Italics supplied.)

During the period 1933 to 1937 Compania Ron Bacardi (the Cuban Corporation) sold in the United States more than 375,000 cases of rum under its registered trade-marks

and spent more than \$300,000 in advertising rum bearing the said trade-marks. (Finding 8; R. 110.) The petitioner has appropriated \$17,500 to be spent in advertising and promotion of the Puerto Rican Bacardi rum, but at the time of the hearing January 17, 1938, had spent only \$1,700 (Testimony of Bosch, R. 140). Beginning with November 1936 both the petitioner and the Cuban Corporation were selling rum under various Bacardi trade-marks in the United States (Testimony of Bosch, R. 146).

On July 31, 1937, plaintiff, appellee filed its complaint praying that the defendant, Rafael Sancho Bonet, as Treasurer of Puerto Rico, be enjoined from enforcing Sections 2, 3, 4, 5 and 7 of Act 149 on the ground that each of said sections is contrary to and violates:

“1. The Fifth and Fourteenth Amendments to the Constitution of the United States and the Commerce Clause thereof, Article 1, Section 8, Clause 3.

“2. Sections 2 and 9 of the Organic Act of Puerto Rico approved March 2, 1917, Chapter 145, Laws of 1917.”

“3. The ‘Federal Alcohol Administration Act’, approved August 29, 1935, as amended.

“4. The Convention between the United States and Cuba. Treaty Series, 833, U. S. Statutes at Large, Vol. 46, page 2907, signed February 20, 1929, proclaimed by the President of the United States, February 27, 1931.”

Further allegations of invalidity were:

“Section 44 of Act No. 6 is also void and of no effect because the subject matter of said section is not embraced in the title of said Act, as required by Section 34 of the Organic Act of Puerto Rico. That Sec. 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that Section is not mentioned in the title of the Act.”

The intervenor-respondent filed an answer as intervenor (R. 77-92) which alleged that the statute was valid and which set up five special defenses (R. 92-22) as follows:

1. Because of its having accepted benefits under the Act, the petitioner is estopped to challenge it.
2. The challenged Acts are valid because enacted pursuant to the police power.
3. The challenged Acts are valid because they are necessary enactments for the control and regulation of the liquor traffic in Puerto Rico.
4. The petitioner is estopped by its laches to challenge the statutes.
5. The facts stated in the bill do not constitute an equitable action.

A preliminary injunction was issued on August 3, 1937, (R. 95) and a permanent injunction was entered on June 30, 1938 (R. 117) prohibiting enforcement of the statute.

CONSTITUTION AND STATUTES.

The sections of the Puerto Rican statutes which petitioner contends are invalid are set forth in Appendix A, *post* pp. 32-37. Certain of these sections are also stated above (*ante* pp. 5-8).

The Constitutional Provisions are stated in Appendix B, *post* p. 38.

The provisions of the Organic Act for Puerto Rico are stated in Appendix C, *post* p. 39.

The pertinent provisions of the Federal Alcohol Administration Act are set forth in Appendix D, *post* pp. 40-45.

The pertinent parts of the Inter-American Trade-Mark Convention are in Appendix E, *post* pp. 46-47.

PETITIONER'S "REASONS FOR GRANTING THE WRIT."

(Petition, p. 8-12)

The petition fails to state sufficient reasons for the granting of the writ. The record shows no necessity for a construction of the Inter-American Trade-mark Convention and Protocol of February 20, 1929 (46 Stat. 2907). Peti-

tioner contends that a construction is necessary because the rights of foreigners, protected by the treaty but discriminated against by the Puerto Rican Statutes, are involved. There are no foreigners involved in this litigation. It is wholly between a Pennsylvania corporation, The Treasurer of Puerto Rico and Destileria Serralles, Inc., a Puerto Rican corporation.

The equal protection clause of the Organic Act of Puerto Rico is almost identical with the same provisions of the Fourteenth Amendment to the Constitution of the United States. It is unlikely that this Court would hold that there was any difference in the meaning of identical words—hence there is no need for the Court to take the case merely to say that identical words have the same meaning. Furthermore the classification assailed is one which decisions of this Court sanction.

The Puerto Rican statutes and the Federal Alcohol Administration Act do not conflict. The Federal Alcohol Administration Act obviously applies only to interstate commerce and until manufacturers of alcoholic liquor have satisfied the state or territorial requirements and are qualified to manufacture under state or territorial license, there is no reason to apply the federal statute.

Repeated decisions of this Court, some of them decided this term, demonstrate that there has been no deprivation of property without due process of law. Puerto Rico merely prohibited the use of certain trade-marks on containers of rum, and since it could prohibit the manufacture of rum altogether, it could prohibit labelling which might be detrimental to the growth of the local liquor industry.

SUMMARY OF ARGUMENT.

The trend of the Argument of Intervenor-Respondent is indicated under the headings "Questions Presented" and "Petitioner's Reasons Relied on for Allowance of the Writ", *ante* pp. 2, and 10-11, respectively.

ARGUMENT.**I.**

The Challenged Statutes Do Not Deny Petitioner the Equal Protection of the Laws, Nor Deprive It of Its Property Without Due Process of Law.

A.**Equal protection.**

If there is one point of law which this Court has decided time without number, it is that a legislature may classify without offending the prohibition against the enactment of statutes denying the equal protection of the laws. An embarrassment of riches faces counsel seeking cases to cite as authority for this proposition. One of the most recent cases decided by this Court on the subject states the rule and cites the leading cases. In *Rapid Transit Corporation v. City of New York*, 303 U. S. 573, the Court, through Mr. Justice Reed, said at p. 578:

"1. *Classification.* No question is or could be made by the Corporation as to the right of a state, or a municipality with properly delegated powers, to enact laws or ordinances, based on reasonable classification of the objects of the legislation or of the persons whom it affects 'Equal protection' does not prohibit this. Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389, 418; *Atchison, T. & S. F. R. Co. v. Matthews*, 174 U. S. 96, 105; *Giozza v. Tiernan*, 148 U. S. 657. Indeed, it has long been the law under the 14th Amendment that 'a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, . . .'. *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Borden's Co. v. Baldwin*, 293 U. S. 194, 209; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584. 'The rule of equality permits many

practical inequalities.' *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 296; *Breedlove v. Suttles*, 302 U. S. 277, 281; *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 509. 'What satisfies this equality has not been and probably never can be precisely defined.' *Magoun v. Illinois Trust & Savings Bank*, *supra*, 293."

In the brief in support of its petition for the writ, petitioner says on page 19:

"But it (the Puerto Rican Statute) goes farther and so separates the class that a dividing line is drawn, marked by a mere date, and sub-classifications created. Petitioner is placed in one of these sub-classifications and all other Puerto Rican distillers occupy the other. The statute withholds from petitioner alone the fruits of successful operation under a famous name and under trade-marks having an established reputation."

The primary objection of Intervenor-Respondent to these statements is that they are so misleading as to amount to misstatements; the meaning of the statute is distorted. The statute does not withhold from the petitioner alone "the fruits of successful operation under a famous name and under trade-marks having an established reputation."

The Circuit Court of Appeals' decision on this point is clearly correct. The Court said: (R. 442)

"We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time."

The Act prohibits the use by any permittee under the Puerto Rican Statute of a trade-mark, name or brand, etc.,

"if said trade-mark, brand, trade-name, commercial name * * * has been used previously in whole or in part directly or in any other manner, anywhere outside the Island of Puerto Rico; *provided* that this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

On pages 379 to 382, inclusive, of the record there is a list of all the distillers and rectifiers operating in Puerto Rico. The prohibitions against the use of certain trademarks, tradenames, etc., apply equally to each of these distillers and rectifiers; to contend otherwise is to distort the meaning of unambiguous language.

There is no conflict between the decision in *Mayflower Farms, Inc. v. Ten Eyck*, 297 U. S. 266, and the decision in the instant case. Petitioner contends that the statutes involved in both cases are similar because they make distinctions based upon whether or not certain activities are antecedent or subsequent to a certain date. There is no substantial similarity, however. The statute in the *Ten Eyck* case prohibited anyone from entering into the milk business who had not been engaged in that business prior to the specified date; the Puerto Rican statute produces no such effect and there is no better proof of this fact than the history of petitioner's own business in Puerto Rico as disclosed by the record.

Merely because it sets a date when rights shall commence or cease the statute does not violate any rule regarding equal protection of the laws. As said by Mr. Justice Holmes in *Sperry & Hutchinson Co. v. Rhodes*, 220 U. S. 502, at p. 505:

" . . . the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning and thus to discriminate between the rights of an earlier and later time."

Petitioner, also urges that the statute is defective because it creates sub-classifications. The test, as regards equal protection, is not whether there is a sub-classification but whether the legislature could make a class of the group it did select. As recently as February 26, 1940, this Court ruled upon this question.

In *State of Minnesota v. Probate Court of Ramsey County, Minnesota*, O. T. 1939, No. 394, the Court speaking through the Chief Justice said:

"Equally unavailing is the contention that the statute denies appellant the equal protection of the laws. The argument proceeds on the view that the statute has selected a group which is a part of a larger class. The question, however, is whether the legislature could constitutionally make a class of the group it did select. That is, whether there is any rational basis for such a selection. We see no reason for doubt upon this point. Whether the legislature could have gone farther is not the question * * *. As we have often said, the legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest."

Petitioner grudgingly admits that classification is allowable, and then assails the classification as being contrary to common sense. It is stated on page 21 of the brief:

"But classification is discrimination, and discriminations cannot stand as reasonable if they offend the plain standards of common sense. *Hartford Steam Boiler Inspection & Insurance Co. v. Harrison*, 301 U. S. 459, 462."

The obvious implication is that the classification in the assailed statutes offend "plain standards of common sense," but the classification is based upon the difference between well-known trade-marks and lesser known trademarks; a classification which has been sustained by this Court as being reasonable in two recent cases, *Borden's Co. v. Ten Eyck*, 297 U. S. 251; and *Old Dearborn Co. v. Seagram Corp.*, 299 U. S. 183. We submit that a finding by this

Court in two instances that a classification based upon such a difference is reasonable ends the question.

The statute does not deny the petitioner nor anyone else the equal protection of the laws.

B.

Due process.

Petitioner argues that by forbidding petitioner to use the Bacardi name and trade-marks the Puerto Rican statute deprives petitioner of its property without due process of law.

The statute was enacted as an exercise of the police power of the Puerto Rican legislature. The Organic Act of Puerto Rico confers upon the legislature of Puerto Rico "all matters of a legislative character, not locally inapplicable," (Organic Act, Sec. 37). Except to the extent that it is limited by the Organic Act, the Constitution of the United States or is subject to the power of Congress to enact overriding legislation, the power of the Puerto Rican legislature is as plenary as that of the States. *Puerto Rico v. The Shell Co.*, 302 U. S. 253.

Under its police powers Puerto Rico could "deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico." It was so held by the District Court (R. 101) and this holding was approved by the Circuit Court of Appeals. (R. 439.) This ruling has not been challenged by the petitioner. Since the right to do business may be withheld it follows that permission may be conditioned upon compliance with terms imposed by general legislation, nor does this offend the due process clause.

The acknowledged power of a state or territory to prohibit the manufacture, sale and transportation of alcoholic liquors includes the lesser power to permit such manufacture, sale and transportation subject to such regulation as the legislature may see fit to impose. This Court so held, unanimously, on November 13, 1939, in *Ziffriin, Inc. v.*

Reeves, 308 U. S. 132, saying through Mr. Justice McReynolds:

"Without doubt a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale or possession, irrespective of when or where produced or obtained, or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them. *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, 320; *Crane v. Campbell*, 245 U. S. 304, 307; *Seaboard Air Line Ry. v. North Carolina*, 245 U. S. 298, 304; *Samuels v. McCurdy*, 267 U. S. 188, 197-198.

"Having power absolutely to prohibit manufacture, sale, transportation, or possession of intoxicants, was it permissible for Kentucky to permit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. The greater power includes the less. *Seaboard Air Line Ry. v. North Carolina*, *supra*. The State may protect her people against evil incident to intoxicants, *Mugler v. Kansas*, 123 U. S. 623; *Kidd v. Pearson*, 128 U. S. 1; and may exercise large discretion as to means employed."

Petitioner also contends that the statute works an expropriation of the Bacardi tradename and trademarks and thus deprives it of its property without due process. It is stated on page 12 of the petition that:

"The statute in question is the sort of expropriation of good will and trademarks which was before this Court in *Baglin v. Cusenier*, 221 U. S. 580 * * * where the French government attempted to appropriate the Chartreuse trademarks."

The statement of petitioner that the French Government attempted to expropriate the Chartreuse trade-marks, is directly contrary to the statement of this Court through Mr. Justice Hughes, where at page 594 it is said:

"Upon the application of the procureur of the Républic, the French Court proceeded to the judicial liqui-

dation of the properties in France held by the non-authorized congregation of the Chartreux, and it was of these properties that a liquidator was appointed. It does not appear that the Court assumed jurisdiction of the trademarks registered on behalf of the monks in other countries. On the contrary, *it appears to have been held that the question of the ownership of such trade-marks was not involved in its determination.*" (Italics supplied)

The *Baglin* case has no bearing upon this controversy. There has been deprivation of property without due process of law; there has been no expropriation of trademarks. The decision of the Circuit Court of Appeals is not in conflict with, but directly in conformity with the oft-repeated doctrine of this Court, that in the exercise of its acknowledged police powers a legislature may impose strict regulations upon the liquor business and that the resulting inconvenience to persons affected does not constitute the taking of property without due process of law. *Mugler v. Kansas*, 123 U. S. 623; *Kidd v. Pearson*, 128 U. S. 1.

II.

There is No Conflict Between the Inter-American Convention for the Protection of Trade-Marks and the Puerto Rican Statute.

Petitioner here again urges, as it did unsuccessfully in both the District Court and the Circuit Court of Appeals, that the assailed statute is invalid because it conflicts with the "General Inter-American Convention for Trade-mark and Commercial Protection."

In its reasons for granting the writ (Petition, p. 8) petitioner contends that it is highly desirable that the Convention be judicially interpreted, and states that one of the questions which arise in this case is whether or not foreigners have been given substantive rights in their trademarks by means of the Convention. There is no such question arising under this case for the reason amongst others that there are no foreigners involved in this case. The pe-

tioner, plaintiff below, is a Pennsylvania corporation; and respondents are the Treasurer of Puerto Rico and Destileria Serralles, Inc., a Puerto Rican corporation.

The position which this Court has taken as to its right or power to settle abstract questions has often and flatly been stated to be that it has no right to decide such questions and will not consider them.

In *Marye v. Parsons*, 114 U. S. 325, the court said at page 329:

"But no court sits to determine questions of law *in thesi.*"

In *Stearns v. Wood*, 236 U. S. 75 an action was brought by one whose personal rights were not directly violated or interfered with to question the validity of a General Order issued by the Secretary of War. This court, through Mr. Justice McReynolds said, at page 78:

"The general orders referred to in the bill do not directly violate or threaten interference with the personal rights of appellant—a Major in the National Guard whose present rank remains undisturbed. He is not therefore in position to question their validity; and certainly he may not demand that we construe orders, acts of Congress, and the Constitution for the information of himself and others, notwithstanding their laudable feeling of deep interest in the general subject. The province of courts is to decide real controversies, not to discuss abstract propositions. *Little v. Bowers*, 134 U. S. 547, 557; *California v. San Pablo Railroad*, 149 U. S. 308, 314; *Richardson v. McChesney*, 218 U. S. 487, 492; *Missouri, Kansas & Texas Ry. v. Cade*, 233 U. S. 642, 648."

Petitioner says that it is important to determine "if industrial property conventions are self-executing when they are complete in themselves as this one is." (Petition p. 8.) Petitioner then states that there are two views held on this question, one of which is set forth in Moore's Digest of International Law, Vol. II, pp. 42 to 44; the other in 19 Op. Atty. Gen. p. 274.

There is no need in order to dispose of any of the questions arising in this case to determine whether or not industrial conventions are self-executing, and if so, when. No one denies and there is no issue here as to whether the Inter-American Trade Mark Convention is in full force and effect, and has been from its effective date. The statement of the petitioner, that there are two views upon the question which are set forth in the volumes cited above cannot go unchallenged.

The ruling by Secretary Bayard found in Vol. II of Moore's International Law Digest, p. 42, concerns a convention entered into on March 20, 1883, to which Great Britain was a party. One of the subjects provided for in the Convention was Patent Protection, and the Convention provided that the citizens or subjects of the various contracting states should enjoy in the various states the same advantages under the respective laws of those states that were then accorded to their own citizens or subjects. The question which was propounded by Her Britannic Majesty's Government was whether or not this convention insofar as the United States was concerned, took effect immediately by reason of the ratification of the convention by the Government of the United States. The note which was written by the Secretary of State in reply to this inquiry is found on page 43 of Moore's Digest, Vol. II, and reads as follows:

"In reply it may be said that by virtue of legislative enactments already in existence at the time of the adhesion of the United States to the convention, its general provisions, so far as they are effectual at all, took effect at once. These General provisions are contained in Article II of the convention, and provide for the reciprocal enjoyment by the subjects and citizens of each of the contracting states of all rights in all other states, in respect to patents, trade-marks, and other industrial property.

"So far as concerns patents for inventions and designs the United States statutes already extend to every person all the rights which American citizens

possess. Sections 4886 and 4929 of the Revised Statutes give the privilege of obtaining patents to 'any person,' no discrimination being made against foreigners."

Further on, in the same note, the subject of trade-marks is discussed and reference is made to the fact that the power of the Government of the United States in dealing with the legislation and protection of trade-marks is not complete. As to this question, the answer is as follows:

"Some of the specific provisions of the convention of 1883 would seem to need further legislation to enable the United States to carry them into effect.

Such provisions are found in Articles IX and X for the seizure upon importation of merchandise bearing unlawfully a trade or commercial mark or commercial name.

No machinery exists under the legislation of the United States to enable the seizure of merchandise bearing spurious trade-marks, and it may therefore, be doubted whether these provisions can be carried out without legislation by Congress."

Clearly, the ruling of the Secretary was this: That when a Convention added nothing to the provisions of the United States statutes already in effect, the Convention took effect immediately, but if a part of the Convention provided that something should be done for which there was no statutory provision, that part of the Convention could not become effective until enabling legislation had been enacted.

The opinion of Attorney General Miller (19 Op. Atty. Gen. 273) cited by petitioner deals with the question of filing of caveats in the Patent Office preliminary to filing applications for patents. The particular question was whether the terms of the Second Article of the Convention, entered into between the United States and certain other nations of which the Swiss Confederation was one, proclaimed June 7, 1887, extended the privileges of filing caveats to the citizens of all the nations who were signatories to the convention.

The patent statutes provided that any citizen of the United States might file such a caveat and that any alien might do so provided he had resided in the United States for one year next preceding the filing of a caveat and had made an oath of his intention to become a citizen. The Attorney General held that the Second Article of the convention which purported to extend to the citizens of the contracting states the same rights to file caveats in the Patent Office as were granted the United States citizens was not self-executing. In reaching this conclusion the Attorney General's holding was identical with Secretary Bayard. It is submitted that petitioner's contention that a conflict existed between the ruling of the Secretary of State and the Attorney General falls to the ground.

One of the primary purposes of the Inter-American Trade-mark Convention was, and is stated to be by the very terms of that convention, the protection of trade-marks and trade-names; and petitioner argues that any statute which forbids the use of trade-marks and trade-names does not protect them, but on the contrary attacks them or discriminates against them, is thus contrary to and in conflict with the convention, and must therefore fall because the treaty under our system of law is paramount to the Puerto Rican statute. In reply to this argument we direct the attention of the Court to Chapter III of the Convention which is entitled "Protection of Commercial Names", and especially to Article 16, of Chapter 3 which defines the protection which is intended to be given by the Chapter. Article 16 reads as follows:

Article 16.

"The protection which this Convention affords to commercial names shall be:

- (a) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

(b) to prohibit the use, registration or filing of a trade-mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States, engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade-mark is intended."

The reading of the foregoing makes it abundantly clear that the protection given is one against infringement. Regulation such as is found in the Puerto Rican statute does not in any way conflict with the Convention and there is therefore no need for any construction of the Convention by this Court.

III.

The Puerto Rican Statutes Do Not Conflict With the Federal Alcohol Administration Act.

Petitioner contends that a conflict exists between the Federal Alcohol Administration Act and the Puerto Rican Statutes, and that the former invalidates the latter. The argument is that the Federal Act "announces the intention of the Congress to regulate the entire traffic in alcoholic beverages between the States, including Puerto Rico, subject to the limits of the Twenty-First Amendment not here involved"; therefore the Federal Act completely displaces any local act not strictly in accord with the Federal Act; that since petitioner has basic permits from the Federal Alcohol Administration to manufacture rum and to warehouse, bottle, sell and ship the rum, therefore petitioner has the right to manufacture, bottle and ship the rum, regardless of the provisions of the Puerto Rican Statute.

This argument entirely overlooks the fact that the Puerto Rican Statutes are not, and are not intended to be a regulation of interstate commerce, nor are they set up in opposition to the Federal power to regulate the manufacture, sale and shipment of liquors. The Puerto Rican statutes

are a valid exercise of the police powers of the Puerto Rican Legislature, exerted for the purpose of regulating the manufacture and sale of intoxicating liquors, a subject which it has been decided time and time again by this Court to be subject to the jurisdiction of the states and territories. *Kidd v. Pearson*, 128 U. S. 1; *Mugler v. Kansas*, 123 U. S. 623.

The police powers of Puerto Rico are as broad as those of a state. *Puerto Rico v. The Shell Co.*, 302 U. S. 253. That case held that the legislative power granted to Puerto Rico by Section 37 of the Organic Act giving the Legislature "all legislative power not otherwise locally inapplicable" gave it the same police powers that a state has. In that case it was said that the grant of legislative power was as "broad and comprehensive as language could make it." 302 U. S. 261. This statement was repeated with approval in the recent case of *Rubert Hermanos, Inc. v. The People of Puerto Rico*, O. T. 1939, 582, decided March 25, 1940.

The police power of Puerto Rico being as extensive as that of a state, the decisions by this Court upon state power to prohibit or regulate the manufacture and sale of liquor directly control the issue here. Two decisions of this Court clearly dispose of the contentions raised by the petitioner. The first of these, *Kidd v. Pearson*, 128 U. S. 1, contained a direct ruling upon the question in this case, which is, may the local Legislature permit the manufacture and sale of liquor and yet regulate or prohibit the manufacture or sale of the liquor for the purposes of transportation beyond the limits of the State.

In that case, a statute of Iowa provided (1) that foreign intoxicating liquors might be imported into the state and there kept for sale by the importer in the original packages or for transportation in such packages and sale beyond the limits of the state; and (2) that intoxicating liquors might be manufactured and sold within the state for medicinal, culinary and sacramental purposes, but for no other pur-

poses, not even for the purpose of transportation beyond the limits of the state.

This statute was attacked on the ground that it unduly burdened and attempted to regulate interstate commerce. This Court held otherwise, saying at page 23:

"We have seen that whether a State, in the exercise of its undisputed power of local administration, can enact a statute prohibiting within its limits the manufacture of intoxicating liquors, except for certain purposes, is not any longer an open question before this court. Is that right to be overthrown by the fact that the manufacturer *intends* to export the liquors when made? Does the statute in omitting to except from its operation the manufacture of intoxicating liquors within the limits of the State for export, constitute an unauthorized interference with the power given to Congress to regulate commerce?

"These questions are well answered in the language of the court in the *License Tax Cases*, 5 Wall. 462, 470: 'Over this commerce and trade (the internal commerce and domestic trade of the States) Congress has no power of regulation, nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject.' The manufacture of intoxicating liquors in a State is none the less a business within that State, because the manufacturer intends, at his convenience, to export such liquors to foreign countries or to other States."

In *Ziffrin, Inc. v. Reeves*, 308 U. S. 132, decided at this term, a similar question to the one involved in this case was presented. The Kentucky statute, comprehensively regulating the production and distribution of alcoholic beverages, provided that liquor should not be transported, except by persons qualified in accordance with the terms

of the Act. Ziffrin, Inc., having failed to qualify, attacked the statute on the ground that the statute was a regulation of and a burden upon interstate commerce. It was argued if the distillation, sale and transportation was permitted, the State could not annex to its consent to manufacture and sell the ban upon the carriage of interstate exports of liquors, except by qualified carriers. This contention was rejected by this Court on the ground that having the power to prohibit Kentucky also had the lesser power to regulate the manufacture and transportation as it saw fit.

The effect of the Kentucky statute and of the Puerto Rican statute are identical. Each statute says that by complying with certain conditions, distillers may manufacture alcoholic spirits, but that having once been manufactured, the spirits may be transported only in certain specified ways,—in Kentucky by duly qualified carriers; in Puerto Rico in containers holding not more than one gallon. If the Kentucky statute does not interfere with interstate commerce, neither does the Puerto Rican statute, and by the same token neither does it conflict with the Federal Alcohol Administration Act. That the Federal Alcohol Administration Act and the regulations issued thereunder were intended to become effective only if the State or territory had laws which permitted the manufacture of liquor, and only after compliance with those laws if they existed, is illustrated by the basic permits which were received by the petitioner. Each of said basic permits contain the provision that it is "conditioned upon the compliance with *** the laws of all States in which you engage in business." (R. 272, 273).

The argument of petitioner would seem to be that the Federal Alcohol Administration Act has the effect of authorizing those obtaining basic permits thereunder to engage in the liquor business in any state or territory, irrespective of local laws. This is manifestly erroneous, *License Tax Cases*, 5 Wall 462; it is only by complying with the local law that the Federal basic permits can be-

come operative. To the extent that they differ from Federal laws or regulations, the laws of the states and territories are paramount concerning all activities prior to the entry of the liquor in interstate or foreign commerce.

IV.

There is No Violation of the Interstate Commerce Clause of the Federal Constitution Because that Clause is Not Applicable to Puerto Rico.

The commerce clause of the Federal Constitution is not applicable to Puerto Rico. It relates only to commerce between the states of the union, foreign commerce, and commerce with Indian tribes. Puerto Rico obviously answers to none of the foregoing descriptions. The language of the commerce clause is (Article I, Section 8, Clause 3):

“The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

Obviously, such language relates only to the States and to commerce among themselves and with foreign nations and with the Indian tribes. The Circuit Court of Appeals for the First Circuit was plainly correct in holding: “The commerce clause does not extend to Puerto Rico.” *Lugo v. Suazo*, 59 F. (2d) 386, 390, and in reaffirming that holding in this case (R. 435).

Puerto Rico is not a “State” within the meaning of that term as it is employed in the commerce clause and elsewhere in the Federal Constitution, as, for example, in the Fourteenth Amendment.

Puerto Rico is a Territory of the United States; an organized Territory, although not yet formally “incorporated” into the Union. *People of Puerto Rico v. Shell Co.*, *supra*, 302 U. S. 253, 257-259.

Congressional power to legislate with respect to commerce of or with Puerto Rico is derived from the general power given to Congress over territory belonging to the

United States by Article IV, Section 3, Clause 2; *Ex Parte Hanson*, 28 Fed. 127.

It is only in a general sense that the Constitution applies to Puerto Rico. It was said by Chief Justice Taft in *Balzac v. People of Porto Rico*, 258 U. S. 298, 312:

“The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. * * * The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements.”

It has been held by this Court that many of the provisions of the Constitution do not apply to Puerto Rico. For example, the provisions of the Fifth Amendment prohibiting criminal prosecutions without prior indictment (*Porto Rico v. Tapia* and *Porto Rico v. Muratti*, 245 U. S. 639), the provisions of the Sixth Amendment guaranteeing the right of trial by jury (*Balzac v. Porto Rico, supra*, 258 U. S. 298), the provisions of Article I, Section 8, Clause 1, requiring that all duties, imposts and excises shall be uniform throughout the United States (*Downes v. Bidwell*, 182 U. S. 244), and the provisions of Article I, Section 9, Clause 5, that no tax or duty shall be laid on articles exported from any State (*Dooley v. United States*, 183 U. S. 151).

Clearly, therefore, the question is not of violation of the interstate commerce clause by the Puerto Rican legislature, but whether the legislature has acted within its orbit. This question must be answered in the affirmative in view of the prior decisions of this Court as to the legislative power of Puerto Rico.

V.

The Decision of the Circuit Court of Appeals is Entirely Consistent With Cardinal Rules of Decision Followed by This Court.

The decision of the Circuit Court of Appeals is based upon the following propositions:

1. The Puerto Rican legislative power is sufficiently broad to enable the Legislature to pass the assailed statutes which are a detailed regulation of the liquor industry in Puerto Rico. (R. 436).

Such a holding is directly in agreement with the most carefully considered decision of this Court in *Puerto Rico v. The Shell Company*, 302 U. S. 253, of which decision this Court said on March 25, 1940:

“The breadth of local autonomy reposed by Congress in the Legislative Assembly was elucidated too recently and too thoroughly in *Puerto Rico v. The Shell Company** to call for repetition here. (*People of Puerto Rico, Petitioner, v. Rubert Hermanos, Inc.*, No. 582 O. T. 1939).

2. Since it had power to prohibit the manufacture, sale and transportation of liquor, Puerto Rico could attach such conditions as it saw fit to the granting of permission to engage in the liquor business. (R. 440).

This holding is directly in accord with the decision of this Court in *Ziffrin, Inc. v. Reeves* (Nov. 13, 1939) 308 U. S. 132.

3. The legislative purpose being legitimate, it lies beyond the scope of the judiciary to strike down the statutes because of any doubts as to the wisdom or sufficiency of the legislation. (R. 440, 441). *Nebbia v. New York*, 291 U. S. 502, 537.

4. Since the Court could not without doubt hold that the statutes were arbitrary or capricious, it could not hold that the due process clause was violated. (R. 441). This is thoroughly consistent with *St. Joseph Stockyards Company v. United States*, 298 U. S. 38; *Standard Oil Company v. Marysville*, 279 U. S. 582; and *West Coast Oil Company v. Parrish*, 300 U. S. 379.
5. The prohibition against the use of certain trade-marks or trade-names applied to all persons who might attempt to use such trade-marks or trade-names and since it thus applied to all in the same class it did not deny petitioner, nor anyone the equal protection of the laws. (R. 441, 442).

This holding simply follows the established doctrine of this Court. *Borden v. Ten Eyck*, 297 U. S. 251; *Rapid Transit Corporation v. New York*, 303 U. S. 573, 578.

The rule that the courts will not question the wisdom or effectiveness of legislation, because decision as to those matters is peculiarly a legislative matter applies particularly to Puerto Rican legislation because of the legislators' knowledge of problems there, a knowledge which mainland courts do not and could not be expected to have.

On March 25, 1940 this Court in *Puerto Rico v. Rubert Hermanos, Inc.*, No. 582 O. T. 1939, decided that the Puerto Rican legislature was competent to enact penalties for violations of a congressional act which as enacted by the Congress made no provisions for penalties. The Court said through Mr. Justice Frankfurter:

“Surely nothing more immediately touches the local concern of Puerto Rico than legislation giving effect to the Congressional restriction on corporate land holdings.”

In granting Puerto Rico legislative power by Section 37 of the Organic Act, however, Congress did not confine the

legislative discretion within any limit. That grant of power, as has been amply demonstrated above by argument and by quotations from decisions of this Court, conferred upon the Puerto Rican Legislature all the police powers of a state.

CONCLUSION.

The writ of certiorari should be denied. The decision of the Circuit Court of Appeals is clearly correct. The petitioner has failed to advance any substantial reasons for the granting of the writ, and there are no questions of general importance involved in the case. The questions arising in the case such as due process, equal protection of the laws, extent of the police powers of the Puerto Rican Legislature, etc., have all been decided strictly in accordance with the established doctrine of this Court, and it would serve no useful purpose for this Court to repeat its ruling on these Puerto Rican questions, all of which have been fully considered and passed upon within the last two or three years.

Respectfully submitted.

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Of Counsel:

H. RUSSELL BISHOP.

APPENDIX A.

Puerto Rican Statutes.

ACT No. 115, "ALCOHOLIC BEVERAGE LAW OF PUERTO RICO," approved May 15, 1936; Laws of 1936, regular session, pp. 610, *et seq.*

Sec. 41.—[Pertinent parts copied in Statement, *ante*, pp. 5-7; Laws of 1936, at pp. 640-646].

Sec. 97. * * *—and it shall be in effect until September 30, 1936, as it contains provisions of an experimental nature.

ACT No. 6, "SPIRITS AND ALCOHOLIC BEVERAGES ACT," approved June 30, 1936; Law of 1936, special session, pp. 44, *et seq.*

To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum," in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said rum was distilled. On the label of every alcoholic beverage shall also appear the word "Distilled," "Rectified," or "Blended," as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose. [at p. 76].

Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided, further*, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer. [at p. 78].

ACT NO. 149, APPROVED MAY 15, 1937; Laws of 1937, regular session, pp. 392, 396.

To amend Section 1 by adding Section 1(B) which declares the Principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes"; to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act, by imposing conditions upon the holders of such permits; to add Section 44(B) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend Section 97 of said

Act, by providing for remedies before the proper courts; to amend Section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Section 1 is hereby amended by adding Section 1(b) to Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes," which section shall be as follows:

"Section 1.—The short title of this Act shall be
"Spirits and Alcoholic Beverages Act."

"Section 1(b).—*Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 2.—Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican*

Rum, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth ($\frac{1}{8}$) of an inch high, said phrase to be not less than one and one-half (1 $\frac{1}{2}$) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified, or blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further*, That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears."

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4.—Section 44(b) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

"Section 44(b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized for-

mulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided*, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5.—Section 97 of Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 97.—(a) Whenever the Treasurer of Puerto Rico is empowered by this Act to sell articles or products confiscated by him or his agents, the aggrieved natural or artificial person may appeal to the corresponding district court, and said court shall have jurisdiction, after hearing the interested parties, to confirm, revoke, or modify the decision of the Treasurer. Said appeal shall be filed within ten days after the interested person is notified.

"(b) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceed-

ings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6.—Section 106 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 106.—An emergency is hereby declared to exist which requires that this Act take effect immediately, and, therefore, Act No. 6 entitled 'An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes,' which bears also the short title Spirits and Alcoholic Beverages Act, approved June 30, 1936, as amended, shall be in full force and effect beginning with the approval of this Act, for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of experimental nature. Such experimental nature is hereby abolished and its indefinite and permanent nature is recognized; and all laws or parts of laws in conflict herewith are hereby repealed."

Section 7.—In regard to trade-marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.

Section 8.—This Act shall take effect ninety days after its approval.

APPENDIX B.**Constitutional Provisions.****Article I, Section 8, Clause 3:**

The Congress shall have Power. * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Article IV, Section 3, Clause 2:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

Fifth Amendment.

No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *.

Twenty-first Amendment, Sec. 3.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

APPENDIX C.

THE ORGANIC ACT FOR PUERTO RICO, ACT OF MARCH 2, 1917,
c. 145, 39 STAT. 951:

Section 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature *** designated "the Legislature of Porto Rico".

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, ***.

APPENDIX D.**FEDERAL ALCOHOL ADMINISTRATION ACT, 49 Stat. 977, c. 814.**

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

*Be it enacted * * *, That this Act may be cited as the "Federal Alcohol Administration Act."*

Sec. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

Sec. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

Unfair Competition and Unlawful Practices.

Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of dis-

tilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: * * *

(e) *Labeling.*—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use

of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date

as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice); bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or * * *

(f) *Advertising.*—To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, inter-

* As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice)."

state or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and, as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

• • •

APPENDIX E.**General Inter-American Convention for Trade-Mark and Commercial Protection.**

(46 Stat. 2907)

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan-American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Havana, and the resolution of May 2, 1928, at the Sixth International Conference of American States at Havana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan-American Union at Washington.

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks" signed at Buenos Aires on August 20, 1910, with a view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indications of geographical origin, and for this purpose have appointed as their respective delegates, * * *

CHAPTER II.**TRADE MARK PROTECTION.****ARTICLE 3.**

Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting

States, upon compliance with the formal provisions of the domestic law of such States. * * *

ARTICLE 10.

The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

ARTICLE 11.

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

CHAPTER III.

PROTECTION OF COMMERCIAL NAMES.

ARTICLE 14.

Trade names or commercial names of persons entitled to the benefit of this Convention shall be protected in all the Contracting States. Such protection shall be enjoyed without necessity of deposit or registration, whether or not the name forms a part of a trade-mark.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 774

BACARDI CORPORATION OF AMERICA,
Petitioner,

RAFAEL SANCHO BONET, Treasurer,
Respondent,
and

DESTILERIA SERALLES, INC.,
Intervenor-Respondent.

SUGGESTIONS OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS OF THE COURTS BELOW

The opinion of the District Court ("Opinion, Findings of Fact and Conclusions of Law"; R. 95-106) is not officially reported. The opinion of the Circuit Court of Appeals, First Circuit, January 12, 1940 (R. 429-443) is reported in 109 F. (2d) 57.

JURISDICTION

Jurisdiction exists in this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

QUESTION PRESENTED

The question is of the power of the Legislature of Puerto Rico to foster, after the repeal of Prohibition, the renascent insular rum manufacturing industry by for-

bidding the labeling of rum manufactured in the Island with labels theretofore used in foreign countries, tending to confuse the casual purchaser; and to prevent the evasion of this regulation by forbidding shipments in bulk. There is in our supporting brief (*infra*, pp. 13-20) an analysis of the three statutes to that end enacted at three succeeding sessions of the Legislature,¹—the first two “experimental” in nature, to remain in effect only for short times; and the third permanent, reciting that the plan had proven satisfactory.

After the bill for the first of the experimental Acts had been introduced in the Legislature,² and notice of the plan had thereby been given to the world, the present petitioner, the American agency of the Cuban corporation, Compania Ron Bacardi, S. A.,³ applied for a license, April 6, 1936, to do business as a “foreign corporation” in Puerto Rico; and later, on July 20, 1936, applied for and received from the insular Treasurer a permit under that Act⁴ for distilling, reefering and warehousing alcohol. In accepting this permit, petitioner expressly accepted the

¹ Act No. 115, approved May 15, 1936, at the regular 1936 session; Act No. 6, June 30, 1936, at the Special Session of 1936; and Act No. 149, May 15, 1937, at the regular 1937 session. Pertinent parts are quoted in the “margin” [foot-note] to the opinion of the Circuit Court of Appeals, R. 430-434. See also Appendix, *infra*, pp. 62-68.

² Necessarily by Saturday, March 21, 1936; in view of the provision of Sections 33 and 34 of the Organic Act, requiring the Legislature to convene in regular session each year on the second Monday of February, and forbidding the introduction or material alteration of any bill [except the general appropriation bill] after the first forty days of the session. See footnote 8, *infra*, pp. 13-14.

³ Confer, *infra*, pp. 41-42.

⁴ Act No. 115, *supra*, approved May 15, 1936, the first Act of the series, superseded, on September 30th, by Act No. 6 of the Special Session.

conditions, as the Act required, binding it to compliance with the statute. So that, whatever investment it may claim to have made in Puerto Rico, was made with full knowledge of the statutory plan.

The statute exempts from its prohibition the use of foreign labels actually registered and in use in Puerto Rico prior to February 1, 1936,—that is to say, prior to the first day of the month when the regular session of the Legislature convened at which the first of these Acts was adopted. That exemption was made in fairness to firms who had actually invested money in Puerto Rico in good faith before the plan was instituted. That was considered reasonable by the Court of Appeals (R. 442; quoted, *infra*, p. 7).

DISTRICT COURT'S DECISION

The legislation was attacked by the present petitioner by this bill for a declaratory judgment and injunction in the United States District Court of the District of Puerto Rico alleging that it is violative (1) of the due process and equal protection clauses of the Constitution and of the Organic Act for Puerto Rico, (2) of the commerce clause of the Constitution, (3) of the Federal Alcohol Administration Act of August 29, 1935, as amended, (4) of the Trade Mark Convention between the United States and various American Republics, including Cuba, signed February 20, 1929, and (5) of the requirement of Section 34 of the Organic Act for Puerto Rico that a bill shall contain but one subject which shall be expressed in the title.

The District Court overruled or disregarded the contentions as to supposed violations of the Federal Alcohol Administration Act, and of the Treaty, and also that with reference to the requirement as to the title of bills under Section 34 of the Organic Act; but upheld petitioner's contentions as to the commerce clause of the Constitu-

tion, and as to due process and the equal protection clauses; and accordingly held the legislation invalid.

CIRCUIT COURT OF APPEALS

The Circuit Court of Appeals reversed. It upheld the legislation. It agreed with the District Court that there is no violation of the Federal Alcohol Administration Act; nor of the Treaty; and ignored petitioner's contention concerning Section 34 of the Organic Act with reference to the titles of the Acts. It disagreed, however, with the District Judge, as to the other matters, upon which he had upheld the petitioner. It held, in the first place (R. 435-436), following its own earlier decision in *Lugo v. Suazo*, 59 F. (2d) 386, 390, that the interstate commerce clause of the Constitution does not run to Puerto Rico, since "Puerto Rico is not a State", and the interstate commerce clause, on its face, relates only to "Commerce with foreign nations, and among the several states, and with the Indian Tribes"; and, hence, that the plenary power of the Congress as to commerce between the mainland and a Territory, such as Puerto Rico, rests, not upon that clause, but upon the Constitutional power given the Congress by Article IV, Section 3, clause 2, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States".⁵

The Circuit Court then holds (R. 438-443), upon a careful discussion, that the legislation here involved constitutes a valid exercise of the police power of the insular Legislature, and does not violate either the due process clause or the equal protection clause of the Fifth Amendment and of Section 2 of the Organic Act of Puerto Rico. The court points out (R. 439-440) that the District Court had said in its opinion (R. 101) that Puerto Rico could

⁵ *Confer, infra*, "Point V", pp. 28-32.

constitutionally "deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico"; and the Circuit Court says (R. 439) that, in so holding, "the District Court was right"; but then the Circuit Court goes on to say (R. 440):

"But we think that having the absolute power to prohibit foreign corporations from manufacturing or selling intoxicants the Puerto Rican Legislature had the right to prescribe the conditions under which such business might be conducted. The greater power includes the less. *Ziffrin v. Martin*, decided November 13, 1939 by the Supreme Court of the United States; ⁶ *Seaboard Air Line Railway v. North Carolina*, 245 U. S. 293, 304. To say the least, the legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition.

"The legislative purpose to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital, so as to avoid the increase and growth of financial absenteeism and to favor this domestic industry and to protect it against any unfair competition, was legitimate. And we may not strike down any legislation designed to effectuate such purpose just because it may be thought unlikely completely to accomplish the desired result. Whether the statutes prohibiting the use of certain trade marks and corporate names and whether the legislation forbidding shipments in bulk (presumably passed in part to prevent an evasion of the trade mark prohibition) will accomplish the desired result is not the question for our determination. The Legislature of Puerto Rico possessing 'substantially all the local legislative powers of a state legislature, in all respects here involved' including the local police powers particularly applicable to the liquor business, has manifested its faith in the efficacy of its policy through three successive sessions, the session of 1936, the special session of 1936 and the regular ses-

* *Ziffrin, Inc. vs. Reeves, et al.*, 308 U. S. 132, 138-139.

sion of 1937, and it is not for us to say whether its faith is well founded. Even if we knew enough about the matter to form a judgment as to the wisdom of these statutes we should be exceeding our function were we to attempt to substitute our judgment for that of the Legislature. As said by the Supreme Court, in *Nebbia v. New York*, 291 U. S. 502, 537, 'with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. * * * Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.'

"Bearing in mind that doubt is not enough, that unconstitutionality must clearly appear in order to warrant us in holding legislation void, and being unable to say that the statutes here questioned so lack any reasonable basis as to be arbitrary or capricious, we think they should not be invalidated as repugnant to the due process clause of the Constitution of the United States or the Organic Act for Puerto Rico. *St. Joseph Stock Yards Company v. United States*, 298 U. S. 38, 51; *Standard Oil Co. v. Marysville*, 279 U. S. 582; *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 391.

"The District Court ruled that 'the provisions of Act No. 6 of June 30, 1936 as amended by Act No. 149 approved May 15, 1937, which restrict the use of certain trade marks and corporate names, discriminate arbitrarily against the plaintiff; violate the equal protection clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid.'

"It would seem that the equal protection clause appearing in the 14th Amendment of the Constitution of the United States limits the powers of the states and is inapplicable to Puerto Rico. But this is of no importance here because the Organic Act for Puerto Rico expressly provides that 'no law shall be enacted

in Puerto Rico which * * * shall deny to any person therein the equal protection of the laws.' The statutory provision forbidding the shipping of rum in bulk, which applies to all shippers, need not be considered in this connection. The above ruling relates only to the provisions prohibiting the use of certain trade marks and corporate names. As to this aspect of the case, the District Court said, 'whether so intended or not the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination.' We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time. We can not say without doubt upon the subject, that such a statute is unusual or capricious or unjustly discriminatory. In *Rapid Transit Corp. v. New York*, 303 U. S. 573, 578, it is said: 'Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. * * * Indeed, it has long been the law under the 14th Amendment that "a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it."'. See also *Borden v. Ten Eyck*, 297 U. S. 251; *United States v. Rock Royal Co-op. Inc.*, 307 U. S. ; 59 S. C. 993. Upon the principles heretofore stated and which must govern us in determining the constitutionality of an act of a legislature possessed of ample police powers, we cannot declare any of the statutory provisions here questioned repugnant to the equal protection clause of the Organic Act of Puerto Rico or if applicable

the same clause appearing in the 14th Amendment to the Constitution of the United States."

STATUTES

As already noted (*ante*, foot-note 1, p. 2), the pertinent parts of the insular Acts here involved are in the "margin" [foot-notes, R. 430-434] to the opinion of the Circuit Court of Appeals. They are analyzed in our appended Brief in Support of these Suggestions (*infra*, pp. 13-20); and those portions of Acts Nos. 6 and 149 here directly assailed are likewise in the Appendix (*infra*, pp. 62-68). Other pertinent constitutional and statutory provisions, federal and insular, are in the Appendix (*infra*, pp. 55-62).

PETITIONER STATES NO SUFFICIENT REASONS FOR GRANTING THE WRIT

Petitioner's "Reasons for Granting the Writ" (*Petition*, pp. 8-12) are stated as: "(1) Desirability of Construction of Trade Mark Convention"; "(2) Importance of Decision on Equal Protection Clause of the Organic Act of Puerto Rico"; "(3) Necessity of Resolving Conflict with Federal Alcohol Administration Act and Regulations"; and "(4) Petitioner should be Protected Against Being Deprived of Its Property Without Due Process of Law".

But: (1) Petitioner does not point out any clause or any language in the Treaty evidencing any intent to override the established trade mark laws, or to do anything further than to grant to the holders of foreign trade marks the same rights in relation to them that the holder of a domestic trade mark would have. And petitioner expressly admits (*Petition*, p. 8) that:

"This Court has often held that trade-marks are creatures of the common law; i.e., the law of the States" [including, of course the Territories].

And, as above pointed out, there was no conflict be-

tween the District Court and the Circuit Court of Appeals on this question. Both courts alike held the Treaty inapplicable. Petitioner points out no conflicting decision, anywhere. [Confer also, *infra*, Brief, "Point IX", pp. 35-36].

(2) Supposed "*Importance of Decision on Equal Protection Clause of the Organic Act of Puerto Rico*" (*Petition*, pp. 9-10). This "Reason" of petitioner is really not quite understood. The "equal protection clause" of Section 2 of the Organic Act of Puerto Rico [*Appendix, infra*, p. 55] is plain enough. No question as to its meaning is stated in the petition, nor raised on the record in this case.

(3) Supposed "*Necessity of Resolving Conflict With Federal Alcohol Administration on Act and Regulations*" (*Petition*, pp. 10-12). No conflict appears. As above pointed out, here again the District Court and the Circuit Court of Appeals were in agreement. Both courts held that this insular legislation does not conflict with the Federal Alcohol Administration Act in any way. Petitioner cites no contrary decisions.⁷ [Confer also, *infra*, Brief, "Point VIII", pp. 34-35]

⁷ The only supposed "conflict" which petitioner points out is simply a plain error on petitioner's part. Petitioner says (*Brief*, pp. 23-24):

"Section 5(c) of the Federal Alcohol Administration Act requires that distilled spirits be labelled in conformity with regulations * * *. The regulations require (Sec. 53; R. 333) that the label show the name of the distiller or rectifier and the place where prepared. Thus the federal regulations *require* petitioner's use of its name upon its label. The Puerto Rican statute *prohibits* petitioner's use of its name upon its label. If petitioner labels as the federal regulation commands, the Puerto Rican statute says it cannot ship." (*Italics are petitioner's*)

But petitioner misstates the Puerto Rican statute. It does **not** prohibit the use of the manufacturer's name upon its label. To the exact contrary, it expressly requires

(4) "Petitioner Should be Protected Against Being Deprived of Its Property Without Due Process of Law". (*Petition*, p. 12).

Under this "Reason" petitioner says: "Trade marks and commercial names are property rights and are jealously protected as a sound public policy", and goes on to speak of "expropriation of good-will and trade marks".

But nothing of that kind is here involved, at all.

BRIEF IN SUPPORT OF THESE SUGGESTIONS APPENDED

Appended is a brief in support of these suggestions in opposition to the granting of the writ, setting out our position somewhat more at length.

CONCLUSION

The decision of the Circuit Court of Appeals was right. The legislation is valid. The petition for certiorari should be denied.

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(Sec. 40 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937; *infra*, p. 18):

"Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: * * * **the name of the bottler or canner.** * * *; *Provided, further,* That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears". (*Emphasis supplied*)

BRIEF IN SUPPORT OF SUGGESTIONS IN OPPOSITION TO
PETITION FOR CERTIORARI

STATEMENT

This was a bill for a declaratory judgment and injunction filed in the United States District Court for the District of Puerto Rico on July 31, 1937, by the plaintiff-petitioner, Bacardi Corporation of America, a corporation of Pennsylvania, against Rafael Sancho Bonet, Treasurer of Puerto Rico, this respondent. The bill is on pages 1 to 23 of the record, and its appended exhibits on pages 25 to 60. Its purpose was epitomized by DISTRICT JUDGE COOPER in his opinion, May 9, 1938, as follows (R. 95):

"By this suit the plaintiff asks that the Treasurer of Puerto Rico be enjoined from enforcing certain provisions of Act No. 6 of the Legislature of Puerto Rico approved by the Governor on June 30, 1936, and Act No. 149 of May 15, 1937, amending said Act No. 6 and making the same permanent. It is alleged that the provisions assailed are repugnant to the due process and equal protection and commerce clauses of the Constitution of the United States, and also violative of the provisions of the Organic Act of Puerto Rico. It is further alleged that the provisions of the Federal Alcohol Administration Act of August 29, 1935, as amended, and the Trade-mark Convention between the United States and various American republics, including Cuba, signed February 20, 1929, are also violated. The plaintiff alleges that the requirement that all bills shall refer to one subject, which shall be expressed in the title, is not observed."

Petitioner alleges in its bill of complaint that it, the Bacardi Corporation of America, a Pennsylvania corporation, possesses the right, by contract with Compania Ron Bacardi, S. A., a corporation of Cuba, to use in the United States, including Puerto Rico, the various "Bacardi" trademarks and labels, and also the secret processes or formulae

for the making of "Bacardi" rum. That the Bacardi distillery and business was established in 1862 in Santiago de Cuba by Facundo Bacardi, and has been continued by the Bacardi family ever since, and that (R. 3):

"(3) Bacardi rum is and always has been made according to definite processes and methods which are trade secrets. It is a product of high and recognized quality and enjoys an excellent reputation. The producers of Bacardi rum possess a valuable good will and property right in the name Bacardi and in the trademarks and distinctive labels under which Bacardi rum has always been sold."

It is alleged (R. 3-4) that various of the Bacardi trademarks have been registered in the United States Patent Office, among them seven trade-marks listed in the bill of complaint, that these registrations are based upon corresponding Cuban registrations, and that they are authorized by the Convention between the United States and Cuba, and by United States statutes [46 Stat., Part. 2, pp. 2907 *et seq.*, Act of February 20, 1905, 15 U.S.C., Secs. 81 and 84 (copies of these seven trade-marks are exhibits to the bill, R. 25-31)], and also that four of the Bacardi trade-marks, *viz.*, "Bacardi", "Bat Trade-Mark", "Ron Bacardi, Superior Carta de Oro", and "Ron Bacardi, Superior Carta Blanca", were registered on April 10, 1935, in the office of the Executive Secretary of Puerto Rico. It is also alleged (R. 5) that "the label proposed to be used by plaintiff in Puerto Rico has been approved by the Federal Alcohol Administration under the Federal Alcohol Administration Act of August 29, 1935" (c. 814, 49 Stat. 977; "A copy of such approval" is an exhibit to the bill, R. 34), and that the plaintiff corporation was licensed to do business in Puerto Rico as a "foreign corporation" on April 6, 1936, by certificate of registration from the Executive Secretary of Puerto Rico, and also that, on July 20, 1936, it received from

the Treasurer of Puerto Rico a permit for distilling, rectifying and warehousing alcohol.

The particular sections of the Acts assailed are (Prayer of the Bill of Complaint, R. 22):

"Sections 2, 3, 4 and 5 (insofar as Section 4 adds subsection (b) to section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937" [Laws of 1937, pp. 392, 393-396; *infra*, pp. 8-10], "and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend." [Act No. 6 of 1936, approved June 30, 1936, appears in the Laws of Puerto Rico, Special Session, 1936, pp. 44-112; Secs. 40, 44 and 97 are, respectively, on pp. 76, 78, and 108; and see *infra*, pp. 17-20, and Appendix, pp. 62-68. They are also set forth in substance in the Bill of Complaint (R. 15)].

The bill also sets out the substance of the Title and of Section 41 of the earlier temporary Act No. 115, the "Alcoholic Beverage Law of Puerto Rico" enacted at the regular 1936 session of the Legislature, and approved May 15, 1936, —[exactly one year earlier than Act No. 149 of 1937],— as an "emergency" act to remain in effect only until September 30, 1936, "as it contains provisions of an experimental nature" (Sec. 97). Laws of 1936, pp. 610, 640-646, 678; *infra*, pp. 14-17.⁸

⁸ Under the provisions of Section 33 of the Organic Act for Puerto Rico as amended by the "Butler Act" of March 4, 1927 (44 Stat. 1418, 1420) requiring regular sessions of the Legislature to convene on the second Monday in February of each year, and to close not later than April fifteenth following, and of Section 34 of the Organic Act (39 Stat. 951, 961) providing that

"No bill, except the general appropriation bill for the expenses of the Government only, introduced in either house of the Legislature after the first forty days of the session, shall become a law",

and that (*ib.*, p. 961):

"• • • , and no bill shall be so altered or amended on its

Section 41 of this Act No. 115 of May 15, 1936, contained provisions substantially along the same lines as those elaborated in the later Acts No. 6 of June 30, 1936, and No. 149 of May 15, 1937, to which the plaintiff-petitioner now objects. Section 41 of Act No. 115 of May 15, 1936 [the temporary Act, the first of the three Acts of the series] contained the provisions (Laws of 1936, at pp. 640-646) quoted in the plaintiff's bill of complaint (R. 7-9) that:

"Section 41.—The Treasurer of Puerto Rico shall not issue any license prescribed by this Act for any

passage through either house as to change its original purpose",

and in view of the fact that, in the year 1936, the second Monday of February, when the Legislature convened under Section 33, fell on February 10th, and that the forty days thereafter limited by the Congress for the introduction of bills expired on Saturday, March 21st, and the expiration date for the session was April 15th [leaving the Governor thirty days thereafter within which to act on bills passed at the session; Organic Act, Sec. 34, 39 Stat., at p. 961], it is evident that the bill which ultimately became this Act No. 115, the "Alcoholic Beverage Law of Puerto Rico", approved by the Governor on May 15, 1936, must have been introduced and pending before the Legislature in the form of a bill giving substantial notice of its final provisions not later than March 21st, 1936, that is to say, more than two weeks before the plaintiff corporation received its license to do business in Puerto Rico on April 6 [Bill of Complaint, "(7)", R. 5] and within only two weeks after plaintiff had entered into its preliminary agreement for a lease on the building on Marina Street ["(7)", R. 5-6] and more than two weeks before it had begun any expenditure in installing its rectifying plant in the building, which expenditures did not begin until April 6 [Bill of Complaint, "(7)", R. 6], and must have been actually passed by both Houses of the Legislature and sent to the Governor by the adjournment date fixed by the Congress on April 15th, before the plaintiff had incurred any substantial expenditure.

business establishment which is less than 25 meters from a public or private school.

"B. After the thirty (30) days following the taking effect of this Act, no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. * * *.

"C. The following persons shall be entitled to permits upon application:

"(1) Every person who on February 1, 1936, possessed a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rectifying, and bottling distilled spirits, and who is" [was] "on that date engaged in said business.

"(2) Any other person who may fully comply with the following requisites:

"(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among other particulars, the following specific information:

"(I) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and the insular Laws.

"(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

"(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

"(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

"(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico."

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.⁹

"(i) The production capacity of existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark

⁹ This absolute prohibition against using THE PROPER NAME of a famous manufacturer on the label was omitted,—and the requirements in this respect softened down,—in the second Act, Act No. 6 of June 30, 1936 (Secs. 40 and 44, quoted *infra*, pp. 18-19).

previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

The provisions of this Section 41 of that first "experimental" Act of May 15, 1936, were elaborated [and in some respects softened down] by sections 40 and 44 of the second Act of the series, Act No. 6, *supra*, of June 30, 1936 (Laws of Special Session of 1936, pp. 44, 76, 78), which was likewise temporary in nature, to remain in effect for only fifteen months, "until September 30, 1937, as it" [likewise] "has provisions of an experimental character" (Sec. 106, at p. 112); and were again re-enacted and further somewhat elaborated by the third Act, Act No. 149 of May 15, 1937, Laws of 1937, pp. 392-396, *supra*, which the plaintiff-petitioner now assails.

Pertinent portions of both of those Acts are in the Appendix [*infra*, pp. 62-68].

The second Act, Act No. 6 of June 30, 1936, *supra*, added the provision (Sec. 44, Laws of 1936, Special Session, p. 78; Bill of Complaint, R. 10; Appendix, *infra*, p. 63):

"*Provided, further*, That distilled spirits, with the exception *** industrial alcohol ***, may be exported from Puerto Rico only in containers holding not more than one gallon".

The third Act of the series, Act No. 149 of May 15, 1937, softened this last prohibition by permitting exportation in bulk where any rectifier "wishes to withdraw from business and to liquidate his stock of rum, provided said stock does

not exceed 30,000 gallons" (Sec. 4, adding "Section 44(b)" to Act No. 6; Laws of 1937, p. 394; Appendix, *infra*, pp. 65-66; Bill of Complaint, R. 14).

That Act converted Act No. 6 into permanent legislation (Sec. 6, amending Section 106 of Act No. 6), extending it

"for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of an experimental nature" (Laws of 1937, p. 395; Appendix, *infra*, p. 67);

and changed the provisions of Sections 40 and 44, concerning the labeling of rum, so as to make them read (Laws of 1937, pp. 393-394; Appendix, *infra*, pp. 65-66; *Confer*, Bill of Complaint, pp. 12-14):

"Section 40.—Every person who manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth ($\frac{1}{8}$) of an inch high, said phrase to be not less than one and one-half ($1\frac{1}{2}$) inches long. On the label of every alcoholic beverage shall also appear the word *distilled*, *rectified*, or *blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further*, That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the

letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears.

"Section 44.—No holder of a permit granted in accordance with the provisions of this or any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

And this further limitation to the *Proviso* in Section 44 was added by a new section (Sec. 7 of Act No. 149; Laws of 1937, p. 396; Appendix, *infra*, p. 68):

"Section 7.—In regard to trademarks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trademarks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1st, 1936, provided such trademarks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date."

A "declaration of policy" was added (Sec. 1, amending Section 1 of Act No. 6; Laws of 1937, p. 393; Appendix, *infra*, pp. 64-65); and a new sub-section [97(b)] added to Section 97, authorizing the "holder of a permit obtained under the provisions of this Act or of any other Act" to

“appeal to a court of competent jurisdiction” for “protection against violations of this Act on the part of other persons” (Laws of 1937, p. 395; Appendix, *infra*, p. 67).

Appended as an exhibit to plaintiff-petitioner’s bill of complaint is a copy of a “Memorial Addressed to the Legislature of Puerto Rico by Puerto Rican Producers” (R. 39-60), dated “February 1937,” which, however, the District Court rejected when plaintiff offered it in evidence on the trial (R. 130-131).

The grounds upon which the bill of complaint assails (R. 15-22) these sections of Act No. 149 [and of Act No. 6 as amended by Act No. 149] are summarized in JUDGE COOPER’s opinion in the District Court (R. 95) as above quoted (*ante*, p. 11).

ANSWERS TO THE BILL OF COMPLAINT

This defendant-respondent, the Treasurer of Puerto Rico, answered (R. 62-73) maintaining the validity of the statute as a valid exercise of the police powers and of the general legislative powers granted to the Legislature of Puerto Rico by the Organic Act and by the Twenty-first Amendment to the Constitution of the United States, and as necessary enactments for the control and regulation of the liquor traffic, within the powers of the Legislature, and especially of the rum industry, and not any denial of due process or of the equal protection of the laws (R. 72-73); and also, as a “separate and distinct defense” that (R. 72):

“(a) It appears from paragraph (7) of the bill of complaint that plaintiff herein received from defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol.

“(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted him thereunder and from the effects of the said Act insofar as it pro-

vided regulation and control of the liquor traffic by the Government of Puerto Rico up to the present time without even raising any objection to the legality of the said Act."

INTERVENING PETITION AND INTERVENOR'S ANSWER

The intervenor-respondent, Destileria Serralles, Inc., a corporation of Puerto Rico, manufacturing there the rum known as "Don Q," and selling it in the Island and elsewhere, filed a "Petition in Intervention" (R. 73-76), and by leave of court (R. 76-77) an answer as Intervenor (R. 77-92) asserting the validity of the statute, and setting up as its "first", and "fourth" "special and separate defenses" that (R. 91-92), *first*:

"(a) It appears from paragraph 7 of the bill of complaint that plaintiff herein received from the defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol, and intervener alleges, upon information and belief, that the said permits contain a paragraph which translated from the Spanish language, reads as follows:

"This permit is conditioned upon compliance with the provisions of the "Alcoholic Beverages Act" of Puerto Rico and with all regulations applicable in accordance with the laws now in force or which may be in force hereafter, and Federal laws and regulations applicable, and shall remain in force from the date of its issuance and until it may be suspended, revoked, annulled, surrendered voluntarily or terminated by virtue of the provisions of the laws or regulations."

"(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted it thereunder and intervener is informed and believes that plaintiff has operated under said permits";

and, *fourth*:

"4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervenor alleges that plaintiff herein is barred by his laches to assail the validity of the statutes aforesaid."

Intervenor's "second" and "third" "separate and distinct defenses" (R. 91-92) are assertions of the validity of the statute, on substantially the same grounds upon which this respondent, the Treasurer of Puerto Rico, asserted its validity in his answer (*ante*, pp. 20-21).

HEARING

A preliminary injunction was granted August 23, 1937, *pendente lite* (*recital in opinion*; R. 95); and the case came on for trial in January, 1938 (R. 93-94) on evidence taken in open court, appearing in the "Statement of Evidence" and Exhibits (R. 127-181, and 182-415). Certain original exhibits, labels, samples of advertisements and photographs, and samples of advertisements with pictures [Plaintiff's exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV" and "AW", and Intervenor's exhibits "B", "D", "E", "F", "G", "H", "I", and "J"] were transmitted to the Circuit Court of Appeals as part of the record on appeal (R. 416-419)].

EVIDENCE

Mr. Jose M. Bosch, Vice president of the petitioner, the Bacardi Corporation of America, and also Vice president of the Cuban company, Compania Ron Bacardi of Cuba, and its agent in the United States, who was born in Santiago, Cuba, and married into the Bacardi family (R. 133-134), testified generally as to the Bacardi business, its world-wide character, its advertising, and as to its entry into Puerto Rico (R. 133-174).

He first "arrived in Puerto Rico around the 22nd of February, 1936"; "came to study the possibility of estab-

lishing a plant for the production of Bacardi rum here in the Island" (R. 140). He stated the nature of the relations between the Cuban company and the Pennsylvania company, this plaintiff "Bacardi Corporation of America", and the way in which the rum is made in Puerto Rico, really under the supervision of the Cuban company (R. 133-147).

DISTRICT COURT'S OPINION

The District Court, in its opinion of May 9, 1938, *supra* (R. 95), held the Acts violative of the commerce clause of the Constitution and of the "due process" and "equal protection" clauses of the Fifth Amendment and of Section 2 (Par. 1) of the Organic Act for Puerto Rico.

Formal "findings of facts" and "conclusions of law" were afterwards filed (R. 106-116), and the "Final Decree" entered June 30, 1938 (R. 116-117).

CIRCUIT COURT OF APPEALS

The Circuit Court of Appeals reversed, as before stated (*ante*, "Suggestions", pp. 4-8); and upheld the validity of the insular legislation. [*Unanimous opinion*; R. 429-443; 109 F. (2d) 57].

QUESTION PRESENTED

As above stated (*ante*, "Suggestions", pp. 1-3), the question here presented is substantially whether the Legislature of Puerto Rico may not, for the protection and encouragement of the local industries of Puerto Rico, forbid a foreign corporation from placing on containers of rum manufactured in the Island a label confusingly giving prominence to its world famous (Cuban) name in a way which the Legislature believes might lead the casual purchaser to become confused and might give the foreign corporation an unfair advantage as against local Puerto Rican manufacturers in building up their manufacturing business within the Island. And whether, in order to prevent evasion of that prohibition, the Legislature may not forbid exportation in bulk.

Respondent believes, and the Circuit Court of Appeals held, that the Legislature does possess such power.

Petitioner maintains the contrary, and the District Court sustained some of its contentions, as above stated, and held the legislation invalid; but was unanimously reversed by the Court of Appeals.

STATUTES

The sections of Act No. 6 of the Legislature of Puerto Rico approved June 30, 1936, and of Act No. 149 approved May 15, 1937, which the plaintiff assails, are stated above (*ante*, pp. 17-20), as also the pertinent parts of Section 41 of the earlier kindred statute, Act No. 115, approved May 15, 1936 (*ante*, pp. 13-17). The pertinent parts of Acts Nos. 6 and 149 are in the Appendix (*infra*, pp. 62-68); and are likewise, together with the pertinent parts of the earlier Act 115, of the Regular Session, 1936, in the margin to the opinion of the Circuit Court of Appeals (R. 430-434; 109 F. (2d), 57, 59-62).

Other Constitutional and statutory provisions, federal and insular, are in the appendix (*infra*, pp. 55-62).

ARGUMENT

Point I

The Legislature of Puerto Rico possesses substantially all of the local legislative powers of a State legislature, in all the respects here involved, including the police powers, and particularly the power to regulate or prohibit the manufacture, transportation, sale or delivery or other traffic in intoxicating liquors.

This court said in *People of Puerto Rico vs. Shell Co.*, 302 U. S. 253, decided December 6, 1937 (at pp. 260-262):

"1. Section 14 of The Foraker Act, passed April 12, 1900, c. 191, 31 Stat. 77, 80, provided that the statutory laws of the United States, not locally inapplicable, should have the same force and effect in Puerto Rico as in the United States, with certain exceptions not

material here. Section 27 (p. 82) provided 'That all local legislative powers hereby granted shall be vested in a legislative assembly * * *.' And by Section 32 (p. 83-84), it was provided that the legislative authority 'shall extend to all matters of a legislative character not locally inapplicable * * *'. These various provisions are continued in force by Sections 9, 25 and 37 of the Organic Act of March 2, 1917, c. 145, 39 Stat. 951. These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, in respect to which this court said in *Clinton v. Englebrecht*, 13 Wall. 434, 441, that the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; and in *Hornbuckle v. Toombs*, 18 Wall. 648, 655-656, we said: 'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature'. See also *Cope v. Cope*, 137 U. S. 682, 684, where this court, speaking of this typical general provision contained in the Utah Organic Act, said that, with the exceptions noted in the provision itself, 'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State.' In *Maynard v. Hill*, 125 U. S. 190, 204, the essential similarity of the various provisions in respect of the powers of territorial legislatures was pointed out, and it was said that what were 'rightful subjects of legislation' was to be determined 'by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represented.'

"The grant of legislative power in respect of local matters, contained in Section 32 of the Foraker Act and continued in force by Section 37 of the Organic Act of 1917, is as broad and comprehensive as language could make it. The primary question posed by the challenge to the validity of the act under consideration is whether the matter covered by the act is one 'of a legislative character not locally inapplicable.' * * *.

"2. The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories. *Gromer v. Standard Dredging Co.*, 224 U. S. 362, 370; *Porto Rico v. Rosaly y Castillo, supra*" [227 U. S. 270], "p. 274. The effect was to confer upon the territory many of the attributes of quasi-sovereignty possessed by the states—as, for example, immunity from suit without their consent. *Porto Rico v. Rosaly, supra*. By those acts, the typical American governmental structure, consisting of the three independent departments—legislative, executive and judicial—was erected. 'A body politic'—a commonwealth—was created. 31 Stat. 79, Sec. 7, c. 191. The power of taxation, the power to enact and enforce laws, and other characteristically governmental powers were vested. And so far as local matters are concerned, as we have already shown in respect of the continental territories, legislative powers were conferred nearly, if not quite, as extensive as those exercised by the state legislatures."

See also, to the same effect, the recent decision, at the present term of this court, March 25, 1940, in No. 582, *People of Puerto Rico vs. Rubert Hermanos, Inc.*

Point II

In the exercise of the police power in local legislation the State legislatures exercise all of the unlimited powers of the English Parliament, except in so far as their powers may be expressly limited by the State constitution or by the Federal Constitution or by Congressional legislation pursuant to Constitutional power.

This Court has said:

"* * * the States possess all the powers of the Parliament of England, except such as have been delegated to the United States or reserved by the people."

Munn v. Illinois, 94 U. S. (4 Otto) 113, 124
(WAITE, CH. J.)

Point III

The police power, as habitually exercised by the State legislatures, extends to the enactment of laws to promote good order and the general welfare of society, as well as the safety, health and morals of the community.

It extends, particularly, to the enactment of laws for the regulation, transportation, sale and delivery of intoxicating liquors.

Point IV

The Twenty-first Amendment to the Constitution leaves the States and Territories wholly free to adopt and enforce such regulations as they may see fit concerning "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors", and expressly forbids violations of such local laws.

The purpose of that provision in Section 2 of the Amendment is

"to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes". *State Board of Equalization of California vs. Young's Market Co.*, 299 U. S. 59, 62; *Mahoney, Liquor Control Commissioner of Minnesota vs. Joseph Triner Corp.*, 304 U. S. 401, 403, 404.

And, as was held in *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 138-139:

"Without doubt a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them * * *.

"Having power absolutely to prohibit manufacture, sale, transportation or possession of intoxicants, was it permissible for Kentucky" [Puerto Rico] "to per-

mit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. The greater power includes the less. *** The State may *** exercise large discretion as to means employed."

Point V

The commerce clause is not applicable to Puerto Rico. It relates only to commerce between the States of the Union.

A. The Circuit Court of Appeals for the First Circuit said in *Lugo vs. Suazo*, 59 F. (2d) 386, 390, June 7, 1934 [followed in its opinion in the present case; R. 435-436; 109 F. (2d) 57, 62-63]:

"The commerce clause does not extend to Puerto Rico."

B. The language of the commerce clause is (Clause 3, Section 8, Article I):

"The Congress shall have Power * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".**

C. Manifestly, that language relates only to the States of the Union, and to commerce among themselves and with foreign nations and with the Indian tribes. The Circuit Court was plainly correct, therefore, in its holdings in the *Lugo vs. Suazo case, supra*, and in the present case, that the commerce clause does not extend to Puerto Rico.

D. It follows that the District Court was in error in holding in this case that the Acts of the Legislature of Puerto Rico here involved are violative of the commerce clause of the Constitution (R. 104-105, 116 ["14"]); and that the Circuit Court of Appeals was right in overruling the District Court, in this respect. The commerce clause is not here involved.

E. The constitutional relation between the legislative jurisdiction of the Congress and that of the Legislature of Puerto Rico is vitally different in this respect from the Constitutional relation between the

legislative jurisdiction of the Congress and that of the State legislatures. In determining the validity of a Puerto Rican statute the question is not whether it invades the commerce clause, or invades powers which, with relation to the States, are exclusively vested in the Congress; but the test is simply whether it exceeds the powers granted to the Puerto Rican Legislature by the Organic Act and other Acts of Congress.

F. Puerto Rico is not a "State" within the meaning of that term as it is employed in the commerce clause and elsewhere in the federal Constitution, as, for example, in the Fourteenth Amendment.

Puerto Rico is a Territory of the United States; an organized Territory, although not yet formally "incorporated" into the Union. *People vs. Shell Co., supra*, 302 U. S. 253, 257-259. In legislating with respect to Puerto Rico the Congress acts by virtue of the authority given it by Article IV, Section 3, clause 2, of the federal Constitution, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". The federal Constitution applies to Puerto Rico in a general sense only,—in the sense that, as was observed by CHIEF JUSTICE TAFT in the *Balzac* case (*Balzac vs. People of Porto Rico*, 258 U. S. 298, 312):

"The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. * * *. The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements."

Many of its provisions are inapplicable in or to Puerto

Rico, either because of express terms that limit their application to the States [such as the commerce clause and the Fourteenth Amendment] or to other subjects not pertinent in any way to the Territories, or to a Territory such as Puerto Rico not yet formally "incorporated" into the Union; or because, not being in their nature among those clauses which embody "guaranties of certain fundamental personal rights declared in the Constitution" [*Balzac vs. Porto Rico, supra*, 258 U. S. 298, 312], some of the provisions of the Constitution do not limit the action of the Congress in legislating, under Article IV, for the "Territory or other Property belonging" to the United States. For example, this Court has held inapplicable in or to Puerto Rico the provisions of the Fifth Amendment prohibiting criminal prosecutions without prior indictment (*Porto Rico vs. Tapia* and *Porto Rico vs. Muratti*, 245 U. S. 639), the provisions of the Sixth Amendment guaranteeing the right of trial by jury (*Balzac vs. Porto Rico, supra*, 258 U. S. 298), the provisions of Article I, Section 8, Clause 1, requiring that all duties, imposts and exercises shall be uniform throughout the United States (*Downes vs. Bidwell*, 182 U. S. 244), and the provisions of Article I, Section 9, Clause 5, that no tax or duty shall be laid on articles exported from any State (*Dooley vs. United States*, 183 U. S. 151).

G. Of course, with respect to the regulation of commerce between Puerto Rico and the States, as well as between Puerto Rico and other Territories, and with foreign nations, the Congress possesses, under the "territorial clause" above mentioned (Article IV, Section 3, Clause 2), the same complete and exclusive powers it possesses, under the "commerce clause", with relation to interstate commerce between the States of the Union. *There remains, however, a sharp distinction between the principles involved*, on the one hand, in a determination whether a statute of a State invades the exclusive power of the Congress under

the commerce clause of the federal Constitution and other clauses relating to the States of the Union, and, on the other hand, those principles affecting a determination of the question whether a statute of the Puerto Rican Legislature exceeds the powers which the Congress has granted to that body by the Organic Act.

This is because, in the case of Puerto Rico, the Congress has by the Organic Act (Secs. 25 and 37, Act of March 2, 1917, 39 Stat. 951, 958, 964; Appendix, *infra*, p. 55) delegated all of its own local legislative powers with respect to that Island to the insular Legislature, except as otherwise prescribed or limited by that Act or other acts of the Congress.

It follows that *the Legislature of Puerto Rico, in legislating locally* for the government and the people of Puerto Rico *can do anything which the Congress itself could do*, except in so far as otherwise limited by the Organic Act or other acts of Congress. *Haavik vs. Alaska Packers Association*, 263 U. S. 510, 514; *Rafferty vs. Smith, Bell & Co.*, 257 U. S. 226, 232; *United States vs. Heinszen & Co.*, 206 U. S. 370, 385-386; *People vs. Shell Co.*, *supra*, 302 U. S. 253, 259 *et seq.*

H. Hence **The Legislature of Puerto Rico** in legislating, as in the Acts here in question, in the exercise of its police powers, for the public welfare of Puerto Rico, the protection or development of its local industries, or for the health or welfare of its people, is, in so far as the "commerce clause" is concerned, or in so far as commerce between Puerto Rico and the States or foreign nations is concerned, is restrained only by the provisions of the Organic Act, or other pertinent acts of Congress, if any; and is not, as is the legislature of a State, confronted with the barrier of exclusive jurisdiction over interstate commerce vested in the Congress by the "commerce clause" of the Constitution.

I. Any question of whether a Puerto Rican statute affecting overseas commerce with the Island, or between the

Island and the mainland, or with other Territories, is invalid because of supposed conflict with the legislative jurisdiction of the Congress, is to be determined, not by any reference to the commerce clause of the federal Constitution and the many judicial interpretations of that clause and its bearing on State statutes, but, on the contrary, is to be determined solely by reference to the powers and limitations of the Puerto Rican Legislature prescribed by the Organic Act and other acts of the Congress.

Direct regulation of interstate commerce is a field of legislative jurisdiction barred to the States of the Union by the federal Constitution. It is a field into which they cannot enter, even where it has been left unoccupied by the Congress, excepting in so far as they are permitted to impose reasonable regulations in the exercise of their legitimate police powers. On the other hand, in the case of the Legislature of Puerto Rico, the situation is exactly reversed. In the latter case, the Congress having extended a general grant of all of its own local legislative powers to the Puerto Rican Legislature, subject only to specified statutory exceptions and limitations, the Legislature can enter into and occupy any part of the field from which it is not excluded by some express provisions of the Organic Act, or by some other act of Congress, if any there be, limiting its powers in the direction in question. *People of Puerto Rico vs. Shell Co., supra*, 302 U. S. 253, 259-263; *People of Puerto Rico* vs. Rubert Hermanos, Inc., supra*, No. 582 at the present term of this Court, March 25, 1940.

Point VI

Even the States of the Union bound by the commerce clause of the Constitution are not prevented by it from legislating in the exercise of their police powers, with relation to intoxicating liquors, forbidding, for example, the manufacture of such liquors within the State or making such regulations as the Legislature may see fit concerning their production within the State.

The legislature may in the exercise of its police powers forbid manufacturing such products within the State, or putting them into the stream of interstate commerce, within the State, except upon such terms and conditions as it may direct. *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 138-139.

So also, with relation to food products, such as oleo-margarine, unless so packed and labeled as to prevent deception or confusion.

The commerce clause does not prevent the exercise of the State's local police power, so long as it does not conflict with legislation of the Congress upon the particular subject. *Milk Control Board of Pennsylvania vs. Eisenberg Farm Products*, 306 U. S. 346, 351-352; *Chassoniol vs. City of Greenwood*, 291 U. S. 584, 587; *Hammer vs. Dagenhart*, 247 U. S. 251; *Bacon vs. Illinois*, 227 U. S. 504; *Western Union Tel. Co. vs. Crovo*, 220 U. S. 374; *N. Y. & N. H. vs. N. Y.*, 165 U. S. 628; *Gulf C. & S. F. R. Co. vs. Hefley*, 158 U. S. 98; *Coe vs. Errol*, 116 U. S. 517.

Point VII

The fact that the Congress itself has chosen not to legislate in any particular field does not imply any prohibition against the Legislature of Puerto Rico enacting local legislation in that field; nor does the fact that the Congress has chosen to legislate generally in any particular field imply any prohibition against the Legislature of Puerto Rico enacting local legislation in the same field; so long as the local insular legislation does not conflict with the legislation of the Congress.

This Court expressly so held in the *Shell Company* case. The court there said (*People of Puerto Rico vs. Shell Co., supra*, 302 U. S. 253, 263):

"In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made mani-

fest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act, and Sec. 32 of the Foraker Act. Nothing is expressed in these acts or, so far as we are advised, in any other federal act which suggests a congressional intent to limit the exercise of the power of local legislation to those subjects in respect of which there is an absence of explicit legislation by Congress; and we find nothing in the nature of the power or in the consequences likely to ensue from the duplicate exercise of it which requires an implication to that effect."

And see also, to the same effect, the recent decision at this Term, in *People of Puerto Rico vs. Rubert Hermanos, Inc., supra*, No. 582.

Point VIII

There is nothing in the acts of the Legislature of Puerto Rico here involved in conflict in any way with the Federal Alcohol Administration Act.

The District Court refused to find with the plaintiff-petitioner corporation on this issue. To the contrary, the court refused a "conclusion of law" on this point requested by the plaintiff. Plaintiff saved a formal exception the court's refusal (R. 117-118), but did not assign any cross-errors in the Circuit Court of Appeals. This question, therefore, is not properly here in issue in this case, and was not properly before the Circuit Court. That court, nevertheless, considered it, and agreed with the District Court that there is no violation of the Federal Act. [Opinion, R. 436-438; 109 F. (2d) 57, 63-64; "Suggestions", *ante*, p. 4]

On its face the Federal Alcohol Administration Act contains no prohibition against the States adding additional requirements not in conflict with those prescribed by the federal act. (Act of August 29, 1935, c. 814, 49 Stat. 977 *et seq.*)

To the contrary, its wording expressly contemplates possible additional requirements of "State law" [e.g. Sec. 5(e), par. 2, 49 Stat. at p. 983; Appendix, *infra*, p. 59].

Clearly, therefore, the District Court and the Circuit Court were right in refusing to consider the Federal Alcohol Administration Act as having any bearing in this case. The approval of plaintiff's "Carta de Plata" label (Plaintiff's Exhibits "N-1" and "N-2") by the Federal Alcohol Administration (Plaintiff's Exhibit "N") is immaterial here. The administrator's approval was not intended to authorize the plaintiff to override the local Territorial law. It does no such thing.

Petitioner cites no conflicting decisions.

Point IX

The acts of the Legislature of Puerto Rico here in question are not in conflict in any way with the Convention between the United States and Cuba proclaimed February 27, 1931 ("Treaty Series" 833; 46 Stat., Pt. 2, p. 2907).

A. As above pointed out ["Suggestions", *ante*, pp. 4, 8-9] the Circuit Court of Appeals determined (R. 438) that the District Court had correctly so held in refusing the proposed "conclusion of law" which the plaintiff requested on this point [to which refusal the plaintiff-petitioner saved a formal exception (R. 118), but has assigned no cross-error]. The District Judge said in his opinion (R. 105):

"It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power."

B. In so holding the District Judge was clearly right, as the Circuit Court says [R. 438, *supra*; 109 F. (2d) 57, 64]. The purpose of the Convention was to prevent piracy of trade-marks, which is not here involved in any way. Unlike a patent, the registration of a trade-mark under the general Act is not the grant of a positive right to use the registered mark, and does not authorize the registrant to project the trade-mark into new territory in violation of the local laws. The acquisition of property rights in trade-marks rests upon the laws of the several States and Territories. *American Trading Co. vs. Heacock Co.*, 285 U. S. 247, 257-258; *United Drug Co. vs. Rectanus Co.*, 248 U. S. 90, 98; *American Steel Foundries vs. Robertson*, 269 U. S. 372, 381; *United States Printing & Lithograph Co. vs. Griggs, Cooper & Co.*, 279 U. S. 156, 158. Confer also *Hanover Star Milling Co. vs. Metcalf*, 240 U. S. 403, 412. [Confer, also, "Suggestions", ante, pp. 8-9].

Point X

The acts here assailed do not violate the due process clause of the Fifth Amendment, nor the provisions of the first clause of Section 2 of the Organic Act guaranteeing due process and equal protection of the laws.

It necessarily follows from what has heretofore been said that the only remaining ground upon which petitioner can seek to sustain the decree of the District Court, and to override the unanimous judgment of the Circuit Court of Appeals, is its contention that the insular statutes here assailed violate the provision of the Fifth Amendment,

"nor shall any person * * * be deprived of life, liberty, or property, without due process of law,"

or that of the first clause of Section 2 of the Organic Act for Puerto Rico (c. 145, 39 Stat. 951, substantially an embodiment of the "due process" clause of the Fifth Amendment):

"Sec. 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

This is the substantial question in this case. The District Court resolved it against the validity of the statutes (*Opinion*, May 9, 1938; R. 95, 96-99); but the Circuit Court of Appeals unanimously reversed, and upheld the validity of the insular legislation. [Confer, "Suggestions", *ante*, pp. 4-8, and the quotation there (at pp. 5-8) from the opinion of the Circuit Court of Appeals, which is believed manifestly correct].

Point XI

In approaching this question several basic considerations are to be kept in mind.

A. As above pointed out (*ante*, Points I, II, III, pp. 24-27), and as was held by the Court of Appeals [R. 440-441, *supra*], the Legislature of Puerto Rico in enacting these statutes was exercising its legislative local police power for the welfare of the community and for the protection and encouragement of its local industries. In the exercise of that power it was clothed with all of the powers of a State legislature, and with all of the powers which the Congress could itself exercise in such local legislation,—substantially all of the broad powers of the English Parliament in this respect.

B. It was exercising these powers *with respect to the manufacture and traffic in intoxicating liquors*, a subject universally conceded to be peculiarly within the scope of the police powers of the local legislature. [Confer, *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 138-139].

C. It was,—as appears not only from the substance of both Act No. 6 of June 30, 1936, and Act No. 149 of May 15, 1937, but as well also from the substance of the first act of the series, Act No. 115 of May 15, 1936, and also, ex-

pressly, from the "declaration of policy" put into Section 1 by Act No. 149 of May 15, 1937,—intending to exercise its police powers to protect the welfare of the community and to protect and develop its local industries by enacting legislation [*"Declaration of Policy"*, Sec. 1(b), Act No. 149, Laws of 1937, pp. 392, 393; Appendix, *infra*, pp. 64-65],

- [1] "to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital",
- [2] "so as to avoid the increase and growth of financial absenteeism",
- [3] "and to favor said domestic industry",
- [4] "so that it may receive adequate protection against any unfair competition",
- [5] "in the Puerto Rican market",
- [6] "in the continental American market",
- [7] "and in any other possible purchasing market".

D. This legislative purpose was certainly, as the Circuit Court of Appeals says [R. 440; 109 F. (2d) 57, 65] a "legitimate" purpose.

E. This legislative purpose to protect the local "renascent liquor industry" from "competition by foreign capital", and to "avoid the increase and growth of financial absenteeism". is quite in line with recent developments of legislative policy in a number of the States of the Union, particularly in relation to the manufacture and transportation and sale of intoxicating liquors.

For example, there are the statutes of CALIFORNIA discriminating against beer produced anywhere outside of that State [so-called "foreign beer", although perhaps produced in some other State of the Union]; MINNESOTA, discriminating against any liquors produced outside of that State [by forbidding bringing any such liquors into the State containing more than 25% of alcohol "ready for sale without further processing", *unless bearing brands registered in the United States Patent Office*]; PENNSYLVANIA, discriminating against [a] beer produced outside of the

borders of the State, as well as [b] sales by corporations having non-resident stockholders and officers [by means of license fees discriminating against distributors of beer produced outside of the State, and by forbidding sales of beer without a license, and forbidding a license to any corporation "unless all its officers and directors, and fifty-one percent of its stockholders have been residents of the State for the period of at least two years"] ; KENTUCKY, rigidly regulating the manufacture, sale, transportation, and possession of intoxicating liquors.

Cases involving the validity of the statutes of these four States, respectively, have recently come before this Court, and the statutes have been sustained. *State Board vs Young's Market Co.*, 299 U. S. 59; *Mahoney vs. Triner Corp.*, 304 U. S. 401; *Premier-Pabst Co. vs. Grosscup*, 298 U. S. 226; *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 134, 138-139.

F. The mere fact of the existence of such a wide-spread sentiment and legislative policy among the States of the Union, along lines of thought quite analogous to the policy of the Legislature of Puerto Rico in enacting these statutes, to protect and encourage the growth of local manufacturing liquor industries, and to permit them to recover from the enforced stagnation of the National prohibition period,—"the renascent liquor industry of Puerto Rico",—as well as to protect them from foreign competition, is in itself evidence of the reasonableness of such a policy, and affords strong grounds for a presumption of the constitutionality of the statutes here assailed.

This Court, speaking by CHIEF JUSTICE HUGHES, in *West Coast Hotel Co. vs. Parrish*, 300 U. S. 379, 399, has recently said:

"The adoption of similar requirements by many States evidences a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be

regarded as arbitrary or capricious, and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment.” (*Emphasis supplied.*)

G. Similarly, as the Court of Appeals noted [R. 440; *ante*, pp. 5-6], the persistence of this policy through three successive sessions of the Legislature of Puerto Rico,—the regular session of 1936, the special session of 1936, and the regular session of 1937,—and the adoption of legislation along these same lines at each one of those three successive sessions,—experimental in character in the first Act; likewise experimental in the second Act, but to remain in effect for a longer period of time; and then, finally, making the legislation permanent in the third Act,—is in itself entitled to consideration as indicative, in the words of the Chief Justice, of “*a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it*”—a deep-seated persistent conviction throughout the Island.

H. The right to enter into a business, or to carry it on, like the right to contract, is not an absolute or unqualified right; but is one of those forms of the “liberty” guaranteed by the due process clause which, like other forms of liberty, is, as was said in *West Coast Hotel Co. vs. Parrish*, *supra*, 300 U. S. 379, 391,

“necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.”

I. Particularly is this limitation to be remembered in the case of a foreign,—or alien,—corporation seeking to do business within a State or Territory. Even with relation to a so-called “foreign corporation” which is “foreign”

only in the sense that it is organized under the laws of some other State or Territory of the United States, the local legislature may wholly deny it the right to do business within the local jurisdiction. And where the right wholly to deny entry exists, the Legislature in permitting entry may couple the permit with limitations or conditions. [*Confer Baltimore & Ohio R. Co. vs. Lambert Run Coal Co.*, 267 Fed. 776, 781 (C.C.A.-IV; certiorari denied, 254 U. S. 651); *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 138-139].

And especially is this true, as above noted (*ante*, p. 3) with reference to a foreign corporation engaging in the manufacture or sale of intoxicating liquors.

J. The foregoing principle is peculiarly applicable in the case of an **alien corporation** asking to do business within a State or Territory. Neither the "due process" clause nor the "equal protection" clause gives any right to an alien corporation to require a State or Territorial legislature to permit it to do business within the State or Territory, nor gives it any right to object to any conditions or limitations that the legislature may see fit to impose upon permitting it to come within the jurisdiction to do business.

Memorandum. This principle is directly applicable here. While, nominally, it is the Pennsylvania corporation, the Bacardi Corporation of America, which is registered to do business in Puerto Rico, yet in fact, the evidence and the findings of the District Court show that it is **really the alien corporation**, Compania Ron Bacardi, S. A. of Cuba, which is seeking to force its way in to do business in Puerto Rico, and is challenging the validity of the local statutes standing in its way. The District Court, upon the testimony of the plaintiff's witness, Mr. Jose M. Bosch, Vice-president (R. 133)

of both the "Bacardi Corporation of America" and also of the Cuban Company, "Compania Ron Bacardi, S. A.", expressly found, (Opinion, R. 103-104) :

"It seems to me that the right of the Cuban company, * * * would have a right to employ an agent in Continental United States to manufacture rum Bacardi for the account of the Cuban company, * * *. And stripped of all legal formalities that is what the contract here in question really is. The label is to be used only on rum manufactured in accordance with the formula owned by the company, and is to be produced under the personal supervision of an authorized agent of the Cuban company. The testimony further shows that the Cuban company has a substantial participation in the profits of the American company." ¹⁰ (*Italics supplied.*)

K. In relation to intoxicating liquors [at least], the Legislature even possesses the power to withdraw a license

¹⁰ It is to be borne in mind that since, as heretofore pointed out (*ante*, Point V, pp. 28-32) the commerce clause of the Constitution is not applicable in Puerto Rico; and since the Trade-mark Convention with Cuba, in view of the basic law with relation to the nature of trade-marks, does not enable the alien corporation to project its trade-marks into a State or Territory in defiance of the local laws; and in view of the fact that there is no limitation by the Organic Act or by any other act of Congress upon the full freedom of the Legislature of Puerto Rico in this respect, it follows that *there is no requirement of federal Constitution or law upon which this alien Cuban corporation can rely to compel the Legislature of Puerto Rico to permit it to come into the Island and there to enter into the business of manufacturing liquor to be labeled with its foreign trade-marks, as it has never done prior to the enactment of the local statutes here in question. The Convention does not clothe it with any such power to override the local Territorial Legislature.*

theretofore issued to a foreign corporation, even though the foreign corporation has already invested money and built up a business under it. *Mahoney vs. Triner Corp., supra*, 304 U. S. 401, 404. In that case this Court, speaking by MR. JUSTICE BRANDEIS, in dealing with the Minnesota statute to which reference has already been made (*ante*, p. 38), said (at p. 404) :

“Third. The fact that Joseph Triner Corporation had, when the statute was passed, a valid license and a stock of liquors in Minnesota imported under it, is immaterial. **Independently of the Twenty-first Amendment, the State had power to terminate the license.** *Mugler v. Kansas*, 123 U. S. 623; *Premier-Pabst Sales Co. vs. Grosscup*, 298 U. S. 226, 228.” (*Emphasis supplied.*)

L. In enacting laws with relation to intoxicating liquors, as with other laws enacted in the exercise of the police power, **the Legislature is primarily the judge of the necessity of the enactment.** *West Coast Hotel Co. vs. Parrish, supra*, 300 U. S. 379, 398; *Nebbia vs. New York*, 291 U. S. 502, 537, 538.

Thus this Court said in the *West Coast Hotel Co.* case, *supra*, 300 U. S. 379, 397-398:

“In *Nebbia v. New York*, 291 U. S. 502 * * * we again declared * * *; that ‘with the wisdom of the policy adopted, *with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal*; that ‘times without number we have said that *the legislature is primarily the judge of the necessity* of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.’” (*Italics supplied.*)

M. **The Legislature possesses wide powers of classification** in relation to the objects and persons to be affected by its legislation. The “equal protection” clause of Section 2 of the Organic Act for Puerto Rico [substantially

like the similar clause in the Fourteenth Amendment, which does not extend to Puerto Rico] does not substantially change or enlarge the effect of the "due process" clause of the Fifth Amendment [which is likewise embodied in Section 2 of the Organic Act]. Taken together, these clauses simply require that State [or Territorial] laws apply alike to all persons similarly situated. They do not prevent, or further limit, classification by the Legislature. *Currin vs. Wallace*, 306 U. S. 1, 14; *Borden's Farm Products Co. vs. Ten Eyck*, 297 U. S. 251, 261-264; *Nebbia vs. New York*, *supra*, 291 U. S. 502; *Borden's Farm Products Co. vs. Baldwin*, 293 U. S. 194, 210; *Barrett vs. State of Indiana*, 229 U. S. 26.

N. There is a strong presumption in favor of the validity of the legislative action. He who assails the constitutionality of a statute must be prepared to show that it is *clearly* unconstitutional. The burden is upon him "to make a convincing showing". *Townsend vs. Yeomans*, 301 U. S. 441, 451.

As the Court of Appeals said [R. 441; *ante*, p. 6]:

"* * * *doubt is not enough*, that unconstitutionality must clearly appear in order to warrant us in holding legislation void." (*Italics supplied.*)

The rule has been re-stated innumerable times. *Confer*, e.g., *Green vs. Frazier*, 253 U. S. 253.

O. The broad and varied powers of the Legislature in the classification and regulation of industry, even where not so clearly affected with a public interest as is the manufacture and dealing in intoxicating liquors, are illustrated in a wide range of cases. Examples are:

Florida—Miami Laundry Co. vs. Florida Dry Cleaning & Laundry Board, Fla. ; 183 Sou. 159. Fixing minimum prices for laundry and dry cleaning.

Florida—Mayo, Commissioner vs. The Polk Co., 124 Fla. 534 (169 Sou. 41); appeal dismissed for want of a substantial federal question, 299 U. S. 507, 508. "Bond and License Law" of 1935 requiring licenses for citrus fruit dealers and canners.

Florida—United States vs. Rock Royal Co-op., Inc., 307 U. S. ; 59 Sup. Ct. 993, 1007-1009. Act sustained, although specifically exempting co-operatives, and applicable to independent canners only.

Georgia—Townsend vs. Yeomans, 301 U. S. 441. Maximum charges handling and selling leaf tobacco.

Illinois—Munn vs. Illinois, 94 U. S. 113. Regulating prices to be charged by grain elevators.

New York—Nebbia vs. People of New York, supra, 291 U. S. 502. Regulating milk prices.

New York—Hageman Farms Corp. vs. Baldwin, 293 U. S. 163. Milk prices.

North Dakota—Brass vs. State of North Dakota, 153 U. S. 391. Maximum charges for storage.

Pennsylvania—Milk Control Board of Pennsylvania vs. Eisenberg Farm Products, supra, 306 U. S. 346. Milk prices.

Washington [State]. West Coast Hotel Co. vs. Parrish, supra, 300 U. S. 379. Minimum wages for women.

Point XII

It is in the light of the foregoing principles that the general rule is to be approached.

A. The general rule is, as it was stated in the *West Coast Hotel Co.* case, *supra*, 300 U. S. 379, 391, that:

"regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process".

B. In determining whether the remedy chosen by the Legislature in the exercise of its broad discretionary powers

so far exceeds that which may be allowed to be "reasonable" in relation to its subject, or is so widely astray from any apparent public purpose that it cannot be said to be "adopted in the interests of the community", all of the foregoing principles must be borne in mind. As was said by MR. JUSTICE ROBERTS speaking for the court in *Borden's Farm Products Co. vs. Ten Eyck, supra*, 297 U. S. 251, 263:

"Judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary. *Standard Oil Co. v. Marysville*, 279 U. S. 582, 586-587".

And, as this Court has likewise said:

"The court does not sit as a board of revision to substitute its judgment for that of the Legislature". (*St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 51).

Point XIII

Considered in the light of the foregoing established principles, the acts of the Legislature of Puerto Rico here assailed do not violate the "due process" or the "equal protection" clause. They are valid enactments of the local legislative power.

WHEREIN DO THEY OFFEND?

A. The District Court says (Opinion, R. 96):

"when the police power is invoked two things must appear. First, an evil; second, a remedy calculated to correct the evil."

He then, "applying this principle to the instant case" quotes the "declaration of policy" in Section 1(b) of Act No. 149 of May 15, 1937 (*Appendix, infra*, pp. 64-65), and says (R. 97): "Here we have the evil". He then asks "What is the remedy provided by the act?"; and,

after quoting Section 44 (*ante*, p. 19), continues (R. 97), without further analysis:

"Does the remedy provided correct the evil complained of? It is difficult to see how anyone can urge that it does."

This is all that he says upon the question. That is his decision. The following pages of the opinion are devoted to distinguishing cases (R. 97-102) relied upon by the defendant and the intervenor, and to discussion of the interstate commerce clause (R. 102-105), which he erroneously considers applicable here, and applies, and which he holds the *proviso* to Section 44(b) of the Act (Laws of 1937, at p. 394; Appendix, *infra*, p. 66) forbidding shipment of distilled spirits [except industrial alcohol, etc.] out of Puerto Rico in containers holding more than a gallon, violates, and therefore to be invalid, *wholly overlooking* the established rule (*ante*, Point V, pp. 28-32) that THE INTERSTATE COMMERCE CLAUSE IS NOT APPLICABLE TO PUERTO RICO AT ALL.

The Circuit Court of Appeals correctly overruled the District Court in this; correctly upheld the validity of the legislation [R. 438-443, *supra*; *ante*, "Suggestions," pp. 4-8].

B. The District Court set up his own individual opinion in opposition to that of the elected representatives of the people in the Legislature upon these questions of fact and of policy. He says (R. 97, *supra*), as above quoted: "Does the remedy provided correct the evil complained of?". And he answers his own question by saying: "It is difficult to see how anyone can urge that it does."

But the members of the Legislature, presumably familiar with local business and social conditions in the Island, have found that it does; and have enacted it into law. The District Court admits that the protection and encouragement of local industries, and discrimination in their favor as against foreign corporations, and particularly as against alien corporations and alien business, and the discourag-

ment or prevention of "financial absenteeism" and, particularly, the protection of "the renascent liquor industry of Puerto Rico" in building it up, after the enforced stagnation by the National prohibition era, are legitimate legislative purposes. But the District Court thinks that the particular remedy adopted by the Legislature in these statutes is not well adapted to those purposes.

C. But, as the Circuit Court of Appeals pointed out (R. 440, *supra; ante*, pp. 5-6), the members of the Legislature, persistently, through three successive legislative sessions have adhered to the opinion that it is; and after twice adopting it experimentally in the two earlier Acts of the series have finally enacted it into permanent legislation by the third Act (Act No. 149 of May 15, 1937), here before us. And it may be suggested that, as a practical matter, and as an effective,—as perhaps the most effective,—practical means of checking "financial absenteeism" in relation to this particular matter of the manufacture of distilled spirits, and especially of rum, in Puerto Rico, and of protecting the Island's "renascent liquor industry" from the devastating competition, while it is being built up, of alien businesses backed by vast aggregations of capital, with world famous names and brands giving them many of the advantages of monopolistic control of the market, the really most effective way was to strike at the use of their alien names and brands in labeling distilled spirits, especially rum, produced in the Island.

Who shall say that the Legislature is not entitled to its opinion on this question; or that its opinion is so merely foolish and unreasonable that it may be disregarded by the courts;—that is to say, that it is so "unreasonable" that "no reasonable man" can be imagined as believing in it.

D. "The proof of the pudding is in the eating". Perhaps the best proof of the effectiveness of the Legislature's remedy is this very lawsuit itself. Here is this great world

famous Bacardi organization, with its world famous "Bacardi" brands, anxious to invade the rum manufacturing field in Puerto Rico, and to throw its world famous name into competition with the local Puerto Rican manufacturers; ready, as it itself says (*Bosch, testimony, R. 138*) to spend \$2,000,000 or more for that purpose,—[and saying that it costs at least \$2,000,000 properly to establish such a business in a new field, which shows what the local manufacturers are facing in endeavoring to build up their "renascent liquor business of Puerto Rico" which the Legislature properly desires to protect],—now finding its designs checked by this very remedy adopted by the Legislature. Hence, it brings this lawsuit; and says that, unless it can have its injunction, it will be "irreparably injured"; that it cannot go ahead in Puerto Rico.

Is not the Legislature's remedy proven effective? Has it not shown itself well adapted to cure the evils stated in the legislative "declaration of policy"?

E. It may also be suggested that there now appears to be another evil attendant upon "financial absenteeism" with respect to this particular industry, the existence of which is developed by the plaintiff's own evidence in this case. Plainly the purpose of this Cuban Bacardi organization in seeking to invade the rum manufacturing field in Puerto Rico is *to come within the United States tariff wall*, so as to be able to manufacture their rum in Puerto Rico and to bring it into the continental United States duty free,—and thereby to save paying the federal Treasury some \$4.50 per case in United States tariff duties. But when they undertake to do that, in the manner they do, the Legislature may well have believed that they manifestly *injure the business reputation and the trade of Puerto Rico, generally, in a very serious way*. This goes beyond injury to the Puerto Rican liquor manufacturers, and affects the entire industry of the Island, in the development of which the insular government is necessarily very gravely concerned.

This Bacardi organization possesses and has used for many years, as the evidence in this case shows, brands and labels for rum "*Carta de Oro*" and "*Carta Blanca*",—its "gold label" and its "white label" ("lined in gold") labels, both world famous [Plaintiff's Exhibits "G" and "H" ("*Carta de Oro*"), and "E" ("*Carta Blanca*"); R. 29, 129, 233-234, 243; 28, 129, 210, 211]. It now proposes to use upon its rum produced in Puerto Rico, not these famous Bacardi gold and white [gold] labels, but on the contrary, a new label which it has adopted and which it calls its "*Carta de Plata*" ["silver label"] with a different (yellowish) color, and a silver triangle in the lower left-hand corner (enclosing the Bacardi "bat" trade mark) (Plaintiff's Exhibits "N-1" and "N-2"; R. 274, 276), instead of the well-known gold triangle in the lower left-hand corner of the famous "*Carta de Oro*" Bacardi labels.

The silver label immediately connotes something inferior to the gold. It might very easily do that, to the mind of the ordinary purchaser, despite the fact that the rum manufactured by this organization in Puerto Rico may be, as they say it is (Bosch, test.; R. 144-145), made by exactly the same process as the rum they make in Cuba, and under the same supervision, and is just as good in every respect.

Nevertheless the casual purchaser of rum in the continental United States, seeing this Bacardi "silver label" on the bottle offered him at a cheaper price [because of savings in customs duties] than the "gold label" with the gold triangle on it, and than the "white label", might very easily, in nine cases out of ten, think either one of two things: Either (1) that even though marked "Puerto Rican Rum" yet this is rum of the well-known Cuban company, the Bacardi organization, and must be good because it is made by Bacardi, and buys it because of the *Cuban* Bacardi name which he associates with Cuba, and hence with good quality; or else, perhaps more probably, (2) seeing the silver

label, the words "*Carta de Plata*", and that it is marked "Puerto Rican Rum", he will conclude that it is Bacardi's *second quality* rum and, think that the *cheaper* price denotes inferior quality, *and will come to associate inferior quality with Puerto Rican rum* in his mind,—and will almost certainly come unconsciously to associate that idea of inferior quality with his thought of all brands of Puerto Rican rum.

The resulting injury, not only to other Puerto Rican producers, but also to Puerto Rican industry generally, is plain. Who shall say that the Legislature of Puerto Rico is without power to prevent it?

F. *The reputation of Puerto Rico as a place from which first quality,—and not second quality,—products come is vital to the Island*, to its people, and to all its industries. This court will take a judicial notice of the acts of the Legislature to encourage the sale of Puerto Rican coffee in the mainland United States [“Cafe Rico”, “the Coffee of Royalty”], and for the encouragement of what is called “Tourism” in the Island, to make the people of the mainland acquainted with the attractions and with the excellent quality of the products of the Island, and the appropriations of money from the insular Treasury for those purposes, and the campaign to those ends being conducted in the mainland. And of the distressing situation of the Island with reference to its great needlework industry in consequence of the effects of the Trade Agreement with Switzerland and of the “wages and hours” laws, and the consequent necessity of fostering the reputation of high quality for that product, since, with these handicaps, only the finest quality of Puerto Rican needlework and lingerie can be profitably marketed; and similarly as to the tobacco industry. And of the constant necessity to emphasize the high quality of Puerto Rican products, and always to endeavor to off-set what seems to be a nation-wide tendency unconsciously to depreciate them [perhaps just because they are

domestic products, and not "imported" or "foreign," as are those of Cuba],—the constant tendency, for example, to buy a high class hand-made Puerto Rican cigar readily if only it is labeled "Cuban", and to buy highclass Puerto Rican lingerie if it is labeled "French". And so, therefore, it is vital to the Island of Puerto Rico with its tremendously dense population accentuating all of its governmental problems, and vital to all of its industries, that the reputation of one of its products, which it hopes to build up into a very great product,—its rum, shall not be slandered by marketing it in such a manner as to give the erroneous impression that Puerto Rican rum is a product of secondary quality.

The Legislature cannot be said to be without the power to protect Puerto Rican industry in this regard.

G. The District Court says (R. 102) "That whether so intended or not" "the Act has the appearance as being so framed as to exclude only the plaintiff." And that, "It is difficult to conceive of a more glaring discrimination". What the court plainly had in mind is that it does not appear that any other alien manufacturer whose trade-marks had not been used in Puerto Rico prior to February 1, 1936, appears as yet to have challenged the Act, or to have attempted to force its way into the liquor manufacturing field in Puerto Rico since the Acts in question were enacted. There may, or there may not be, other organizations similarly situated with the plaintiff, who would like to come in. Whether there be or not is immaterial. If there be only this one in the class, that does not give it a monopolistic right to defy the local laws. To the contrary, it may the better illustrate their value and necessity. Competition of just such world famous alien organizations, with the advantages of their famous names and the backing of great accumulated capital, would seem to be among the sort of things that the Legislature may properly consider "unfair" to the local Island industry. The clause in the Act

permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, is not an unusual provision, nor in any way unfairly discriminative against foreign organizations that did not seek to come in before that time. On the contrary, it seems quite reasonable to protect those who had already come in while the local laws permitted it, had invested money and established themselves at that time.

H. As the Circuit Court of Appeals said (R. 442; *ante*, "Suggestions," p. 7):

"We think the court's ruling that the statutes are invalid as constituting a denial of equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee" [petitioner] "was the only manufacturer affected by the particular statutory provision here considered. But they applied to all who might later engage in the business."

Point XIV

No question of actual deprivation of property is here involved.

On the contrary it appears (*ante*, Footnote 8, pp. 13-14, and "Suggestions", *ante*, p. 2) that this Bacardi organization did not come into the Island before they had full notice of the intention of the Legislature, in the spring of 1936, to enact laws along these lines; and did not in any way definitely obligate themselves, or invest any substantial amount of money, until after the enactment of the second act of the series, Act No. 6 of June 30, 1936. The only question possibly presented here is, therefore, not of any supposed actual deprivation of property, but only if a deprivation of a supposed "liberty" on the part of this alien organization to force its way into the field of manufacturing liquors in Puerto Rico, in defiance of the local law. It possesses no such absolute liberty.

CONCLUSION

The statutes here assailed are valid. The judgment of the Circuit Court of Appeals, reversing the decree of the Dis-

trict Court, was right. The petition for certiorari should be denied.

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APPENDIX*Institutes and Constitutional Provisions***CONSTITUTION:****Article I, Section 8, Clause 3.**

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Article IV, Section 3, Clause 2.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

Fifth Amendment.

No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

Twenty-first Amendment, Sec. 2.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

VINERAL:

The Organic Act for Porto Rico, Act of March 2, 1917, c. 145, 39 Stat. 95;:

Section 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the law.

Sec. 26. That all local legislative power in Porto Rico, except as herein otherwise provided, may be vested in a Legislature . . . designated "the Legislature of Porto Rico".

Sec. 37. That the franchises and immunities so provided shall extend to all matters of a legislative character not locally manageable. . . .

Federal Alcohol Administration Act, of Nov. 25, 1933.

To further protect the revenue derived from the sale

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APPENDIX

Statutes and Constitutional Provisions

CONSTITUTION :

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The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

FEDERAL :

The Organic Act for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951:

Section 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * * .

Federal Alcohol Administration Act, 49 Stat. 977, c. 814.

To further protect the revenue derived from distilled

spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted • • • , That this Act may be cited as the "Federal Alcohol Administration Act."

Sec. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or delivery for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

Sec. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

Unfair Competition and Unlawful Practices

Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or

other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: * * *

(e) *Labeling.*—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of

a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice),¹¹ bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the

¹¹ As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice)."

Administrator upon any application under this subsection; or • • •

(f) *Advertising.*—To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on

June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

PUERTO RICO

Act No. 115, "Alcoholic Beverage Law of Puerto Rico", approved May 15, 1936; Laws of 1936, regular session, pp. 610, *et seq.*

Sec. 41.—[Pertinent parts copied in Statement, *ante*, pp. 5-7; Laws of 1936, at pp. 640-646].

Sec. 97. ***—and it shall be in effect until September 30, 1936, as it contains provisions of an experimental nature.

Act No. 6, "Spirits and Alcoholic Beverages Act", approved June 30, 1936; Law of 1936, special session, pp. 44, *et seq.*

To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic bever-

age is rum, said person shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum", in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said rum was distilled. On the label of every alcoholic beverage shall also appear the word "Distilled", "Rectified", or "Blended", as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose. [at p. 76.]

Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided, further*, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer. [at p. 78.]

Act No. 149, approved May 15, 1937; Laws of 1937, regular session, pp. 392-396.

To amend Section 1 by adding Section 1(B) which declares the Principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide

funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes"; to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act, by imposing conditions upon the holders of such permits; to add Section 44(B) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend Section 97 of said Act, by providing for remedies before the proper courts; to amend Section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Section 1 is hereby amended by adding Section 1(b) to Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes," which section shall be as follows:

"Section 1.—The short title of this Act shall be "Spirits and Alcoholic Beverages Act."

"Section 1(b).—*Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American

market, and in any other possible purchasing market."

Section 2.—Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (1/8) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified, or blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further*, That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears."

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been

used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4.—Section 44(b) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

"Section 44(b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided*, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5.—Section 97 of Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 97.—(a) Whenever the Treasurer of Puerto Rico is empowered by this Act to sell articles or products confiscated by him or his agents, the aggrieved natural or artificial person may appeal to the corresponding district court, and said court shall have jurisdiction, after hearing the interested parties, to confirm, revoke, or modify the decision of the Treasurer. Said appeal shall be filed within ten days after the interested person is notified.

"(b) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6.—Section 106 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 106.—An emergency is hereby declared to exist which requires that this Act take effect immediately, and, therefore, Act No. 6 entitled 'An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes', which bears also the short title Spirits and Alcoholic Beverages Act, approved June 30, 1936, as amended, shall be in full force and effect beginning with the approval of this Act, for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of experimental nature. Such experimental nature is hereby abolished and its indefinite and permanent nature is recognized; and all laws or parts of laws in conflict herewith are hereby repealed."

Section 7.—In regard to trade-marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.

Section 8.—This Act shall take effect ninety days after its approval.

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OCT 9 1940

CHARLES ELMORE CHOPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 21

BACARDI CORPORATION OF AMERICA,
Petitioner,

vs.

MANUEL V. DOMENECH (*formerly Rafael Sancho Bonet*),
Treasurer of Puerto Rico,
Respondent,
and

DESTILERIA SEBBALLES, INC.,
Intervenor-Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF
APPEALS, FIRST CIRCUIT

BRIEF FOR RESPONDENT

WILLIAM CATRON RIGBY,
Attorney for Respondent.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN E. MARSHALL,
Solicitor for the Department of the Interior,
Of Counsel.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

No. 21

BACARDI CORPORATION OF AMERICA,
Petitioner,
vs.

MANUEL V. DOMENECH (*formerly* Rafael Sancho Bonet),
Treasurer of Puerto Rico,
Respondent,
and
DESTILERIA SERRALLES, INC.,
Intervenor-Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF
APPEALS, FIRST CIRCUIT

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the District Court for Puerto Rico ("Opinion, Findings of Fact and Conclusions of Law"; R. 95-106) is not officially reported. The unanimous opinion of the Circuit Court of Appeals, First Circuit, January 12, 1940 (R. 429-443) is reported in 109 F. (2d) 57.

JURISDICTION

Jurisdiction appears to exist in this Court under Section 240(a) of the Judicial Code, as amended by the Act

of February 13, 1925, c. 229, 43 Stat. 938. Certiorari was granted April 22, 1940 (R. 444; 309 U. S. 652).

QUESTIONS PRESENTED

First: Validity of the Legislation

The primary question is of the power of the Legislature of Puerto Rico to enact certain statutes designed to foster the revival of the insular rum industry after the repeal of prohibition, and to protect it, by forbidding the labeling of rum manufactured in the Island with labels theretofore used in foreign countries; and to prevent evasion of this regulation by forbidding shipments in bulk.

The petitioner-plaintiff assails the legislation on several grounds, thus epitomized by the District Court (R. 95):

"It is alleged that the provisions assailed are repugnant to the due process and equal protection and commerce clauses of the Constitution of the United States, and also violative of the provisions of the Organic Act of Puerto Rico. It is further alleged that the provisions of the Federal Alcohol Administration Act of August 29, 1935, as amended, and the Trade-mark Convention between the United States and various American republics, including Cuba, signed February 20, 1929" [proclaimed, February 27, 1931], "are also violated. The plaintiff alleges that the requirement that all bills shall refer to one subject, which shall be expressed in the title, is not observed."

The District Court ignored, in his opinion, the contention of violation of the Federal Alcohol Administration Act, but [as is noted by the Circuit Court of Appeals; R. 438, top of page] he directly overruled the contention by specifically refusing a "conclusion of law" requested by the plaintiff-petitioner on that point [Plaintiff's Exceptions, R. 117-118]; and passed by the objections to the

form and titles of the Acts, and of supposed violation of the Treaty or Convention, intimating, however, that, had he found it necessary, he would have overruled them (R. 105). But he held the legislation violative of the commerce clause, in so far as it prohibits bulk shipments of distilled liquors out of the Island; and also violative of the due process and the equal protection clauses of the Constitution and of the Organic Act for Puerto Rico.

The Circuit Court of Appeals reversed. It upheld the legislation. It disregarded the objection to the form and titles of the Acts; and it agreed (R. 438) with the District Court that the legislation does not violate either the Federal Alcohol Administration Act or the Treaty or Convention with Cuba; but it disagreed with the District Court on the other issues. As to the commerce clause it adhered to its former decision [*Lugo vs. Suazo*, 59 F. (2d) 386, 390; June 7, 1934] that the commerce clause does not extend to Puerto Rico; and it held that the legislation does not violate either the due process or the equal protection clause, either of the Constitution or of the Organic Act for Puerto Rico.

Second: Estoppel of Petitioner to Question It

(2) Another question is presented by the cross contention of the Intervenor-Respondent, and of this Respondent, that, in any event, this plaintiff-petitioner, the Bacardi Corporation, is estopped from questioning the validity of these statutes by its own acts of acquiescence. It applied for and accepted distillers' permits under Act No. 115 of May 15, 1936, the first Act of the series here assailed, which obligated it to consent to compliance with the requirements of the statute. It proceeded under those permits for a year afterwards. The amendatory statute of 1937, enacted before it filed this suit in the District Court, does not affect the essential character of the legislation. The District Court overruled this contention of the Re-

spondents (R. 103-104). The Circuit Court of Appeals considered it unnecessary to decide it (R. 443; 109 F. (2d), at p. 66), in view of its determination that the statutes are valid.

Explanatory of the Positions of the Parties

There is under the heading "Statement" (*infra*, pp. 12-19) an analysis of the three statutes enacted to the end first above stated, at three succeeding sessions of the Legislature,¹—the first two "experimental" in nature, to remain in effect only for short times; and the third permanent, reciting that the plan had proven satisfactory.

*After the bill for the first of the experimental Acts had been introduced in the Legislature,² and notice of the plan had thereby been given to the world, the present petitioner, the American agency of the Cuban corporation, Compania Ron Bacardi, S. A.,³ amended its federal permit, on March 28th, so as to permit it to do business in Puerto Rico (R. 4-5); and applied for a license, on March 31st, and received it on April 6, 1936, to do business as a "foreign corporation" in Puerto Rico (R. 284-286); and later, applied for and received from the insular Treasurer on July 20, 1936, a permit under the first Act⁴ for distilling, rectifying and warehousing alcohol (R. 228). In accepting this permit, petitioner expressly accepted the conditions, as the Act required [Sec. 41; *infra*, pp. 14-16] binding it to compliance with the statute.*

¹ Act No. 115, approved May 15, 1936, at the Regular 1936 session; Act No. 6, June 30, 1936, at the Special Session of 1936; and Act No. 149, May 15, 1937, at the Regular 1937 session. Pertinent parts are quoted in the "margin" [foot-note] to the opinion of the Circuit Court of Appeals, R. 430-434; 109 F. (2d), at pp. 59-60. See also, for the two latter, the Appendix to our "Suggestions of Respondent in Opposition" to the petition for certiorari here, pp. 62-68; and, as to Act No. 115, *infra*, pp. 14-16.

² Necessarily by Saturday, March 21, 1936; in view of

So that, *whatever investment* it may claim to have made in Puerto Rico, *was made with full knowledge of the statutory plan.*

The statute exempts from its prohibition the use of foreign labels actually registered and in use in Puerto Rico prior to February 1, 1936, and of domestic labels "used exclusively in the continental United States" prior to that date,—that is to say, prior to the first day of the month when the regular session of the Legislature convened at which the first of these Acts was adopted. That exemption was made in fairness to firms who had actually invested money in Puerto Rico in good faith before the plan was instituted. That was considered reasonable by the Court of Appeals (R. 442; quoted, *infra*, p. 9).

Respondent believes that the decision of the Circuit Court of Appeals was right, and should be affirmed. The objection made by plaintiff-petitioner in the District Court to the form and titles of the Acts, which that court said (R. 105) it "would not be disposed to sus-

the provisions of Sections 33 and 34 of the Organic Act, requiring the Legislature to convene in regular session each year on the second Monday of February, and forbidding the introduction or material alteration of any bill [except the general appropriation bill] after the first forty days of the session. See footnote 8, *infra*, pp. 13-14.

³ *Confer, infra*, pp. 60-61.

⁴ Act No. 115 of the Regular Session, approved May 15, 1936. The second Act, Act No. 6, *supra*, approved June 30, 1936, carrying an emergency clause [Laws of 1936, special session, p. 112; Secs. 105, 106], apparently putting it into effect on July 1, 1936, did not actually take effect for 90 days,—until September 28,—because, as the Executive Secretary's certificate shows (unnumbered Exhibit; original on file in this court), the emergency clause, Sec. 106, was passed only by a majority vote, failing to receive the requisite 2/3 vote.

tain", and which the Circuit Court of Appeals wholly ignored, has not even been mentioned by the petitioner here, either in its petition for certiorari or the supporting brief, or in its present brief on the writ. It appears to have been abandoned; and may, it is submitted, be wholly disregarded by this Court.

CIRCUIT COURT OF APPEALS

As stated, the Circuit Court of Appeals upheld the legislation. It agreed with the District Court that there is no violation of the Federal Alcohol Administration Act; nor of the Treaty; and it ignored petitioner's contention concerning Section 34 of the Organic Act with reference to the form and titles of the Acts. It disagreed, however, with the District Judge as to the other matters, upon which he had upheld the petitioner. It held, in the first place (R. 435-436), following its own earlier decision in *Lugo v. Suazo*, 59 F. (2d) 386, 390, that the interstate commerce clause of the Constitution does not run to Puerto Rico, since "Puerto Rico is not a State", and the interstate commerce clause, on its face, relates only to "Commerce with foreign nations, and among the several states, and with the Indian Tribes"; and, hence, that the plenary power of the Congress as to commerce between the mainland and a Territory, such as Puerto Rico, rests, not upon that clause, but upon the Constitutional power given the Congress by Article IV, Section 3, clause 2, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States".⁵

The Circuit Court then holds (R. 438-443), upon a careful discussion, that the legislation here involved constitutes a valid exercise of the police power of the insular Legislature, and does not violate either the due process clause or the equal protection clause of the Fifth Amend-

⁵ *Confer, infra*, "Point V", pp. 31-37.

ment and of Section 2 of the Organic Act for Puerto Rico. The court points out (R. 439-440) that the District Court had said in its opinion (R. 101) that Puerto Rico could constitutionally "deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico"; and the Circuit Court says (R. 439) that, in so holding, "the District Court was right" [citing *La Tourette vs. McMaster*, 248 U. S. 465 "supporting the constitutionality of the legislative exclusion of non-resident insurance agents", and *Premier Pabst Co. vs. Grosscup*, 298 U. S. 226 (*infra*, pp. 58, 62)]; and then the Circuit Court goes on to say (R. 440; 109 F. (2d), at pp. 64-66):

"But we think that having the absolute power to prohibit foreign corporations from manufacturing or selling intoxicants the Puerto Rican Legislature had the right to prescribe the conditions under which such business might be conducted. The greater power includes the less. *Ziffrin v. Martin*, decided November 13, 1939 by the Supreme Court of the United States;* *Seaboard Air Line Railway v. North Carolina*, 245 U. S. 298, 304. To say the least, the legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition.

"The legislative purpose to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital, so as to avoid the increase and growth of financial absenteeism and to favor this domestic industry and to protect it against any unfair competition, was legitimate. And we may not strike down any legislation designed to effectuate such purpose just because it may be thought unlikely completely to accomplish the desired result. Whether the statutes prohibiting the use of certain trade marks and corporate names and whether the legislation forbidding shipments in bulk (presumably passed in part to prevent an evasion of the trade mark prohibition) will accomplish the desired result

* *Ziffrin, Inc. vs. Reeves, et al.*, 308 U. S. 132, 138-139.

is not the question for our determination. The Legislature of Puerto Rico possessing 'substantially all the local legislative powers of a state legislature, in all respects here involved' including the local police powers particularly applicable to the liquor business, has manifested its faith in the efficacy of its policy through three successive sessions, the session of 1936, the special session of 1936 and the regular session of 1937, and it is not for us to say whether its faith is well founded. Even if we knew enough about the matter to form a judgment as to the wisdom of these statutes we should be exceeding our function were we to attempt to substitute our judgment for that of the Legislature. As said by the Supreme Court, in *Nebbia v. New York*, 291 U. S. 502, 537, 'with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. * * * Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.'

"Bearing in mind that doubt is not enough, that unconstitutionality must clearly appear in order to warrant us in holding legislation void, and being unable to say that the statutes here questioned so lack any reasonable basis as to be arbitrary or capricious, we think they should not be invalidated as repugnant to the due process clause of the Constitution of the United States or the Organic Act for Puerto Rico. *St. Joseph Stock Yards Company v. United States*, 298 U. S. 38, 51; *Standard Oil Co. v. Marysville*, 279 U. S. 582; *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 391.

"The District Court ruled that 'the provisions of Act No. 6 of June 30, 1936 as amended by Act No. 149 approved May 15, 1937, which restrict the use of certain trade marks and corporate names, discriminate arbitrarily against the plaintiff; violate the equal protection clause of the Constitution of the

United States and the Organic Act of Puerto Rico and are invalid.'

"It would seem that the equal protection clause appearing in the 14th Amendment of the Constitution of the United States limits the powers of the states and is inapplicable to Puerto Rico. But this is of no importance here because the Organic Act for Puerto Rico expressly provides that 'no law shall be enacted in Puerto Rico which *** shall deny to any person therein the equal protection of the laws.' The statutory provision forbidding the shipping of rum in bulk, which applies to all shippers, need not be considered in this connection. The above ruling relates only to the provisions prohibiting the use of certain trade marks and corporate names. As to this aspect of the case, the District Court said, 'whether so intended or not the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination.' *We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936; does not unduly discriminate against foreign corporations which had not entered the field before that time. We can not say without doubt upon the subject, that such a statute is unusual or capricious or unjustly discriminatory.* In *Rapid Transit Corp. v. New York*, 303 U. S. 573, 578, it is said: 'Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. *** Indeed, it has long been the law under the 14th Amendment that "a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it."'. See also *Borden v.*

Ten Eyck, 297 U. S. 251; *United States v. Rock Royal Co-op. Inc.*, 307 U. S. [533, 562 *et seq.*]; 59 S. C. 993. Upon the principles heretofore stated and which must govern us in determining the constitutionality of an act of a legislature possessed of ample police powers, we cannot declare any of the statutory provisions here questioned repugnant to the equal protection clause of the Organic Act of Puerto Rico or if applicable the same clause appearing in the 14th Amendment to the Constitution of the United States." (*Emphasis and italics supplied.*)

STATUTES

As already noted (*ante*, foot-note 1, p. 4), the pertinent portions of the Acts here assailed, and of the first Act of the Series, Act No. 115 of the Regular Session of 1936, are in the "margin" [foot-notes; R. 430-434; 109 F. (2d), at pp. 59-62] to the opinion of the Circuit Court of Appeals. They are analyzed under the heading "Statement" (*infra*, pp. 12-19); and those portions of Acts Nos. 6 and 149 here directly assailed are likewise in the Appendix (pp. 62-68) to our "Suggestions" in opposition to the petition for certiorari, as are also other pertinent constitutional and statutory provisions, federal and insular. The pertinent parts of the Treaty or Convention upon which Petitioner relies are in the Appendix to this brief (*infra*, pp. 75-92).

STATEMENT

Bill of Complaint

The bill for a declaratory judgment and injunction, filed in the United States District Court for the District of Puerto Rico on July 31, 1937, against Rafael Sancho Bonet, former Treasurer of Puerto Rico, since succeeded by Manuel V. Domenech, this respondent, is on pages 1 to 23 of the record, and its appended exhibits on pages 25 to 60. Its purpose was epitomized by DISTRICT JUDGE COOPER in his opinion, May 9, 1938, as above quoted (*ante*, p. 2).

It alleges that plaintiff-petitioner, the Bacardi Corporation of America, a Pennsylvania corporation, possesses the right, by contract with Compania Ron Bacardi, S. A., a corporation of Cuba, to use in the United States, including Puerto Rico, the various "Bacardi" trade-marks and labels, and also the secret processes or formulae for the making of "Bacardi" rum. That the Bacardi distillery and business was established in 1862 in Santiago de Cuba by Facundo Bacardi, and has been continued by the Bacardi family ever since, and that (R. 3):

"(3) Bacardi rum is and always has been made according to definite processes and methods which are trade secrets. It is a product of high and recognized quality and enjoys an excellent reputation. The producers of Bacardi rum possess a valuable good will and property right in the name Bacardi and in the trade-marks and distinctive labels under which Bacardi rum has always been sold."

It is alleged (R. 3-4) that various of the Bacardi trade-marks have been registered in the United States Patent Office, among them seven trade-marks listed in the bill of complaint, that these registrations are based upon corresponding Cuban registrations [not including, however, the silver label, "*Carta de Plata*," proposed to be used in Puerto Rico], and that they are authorized by the Convention between the United States and Cuba, and by United States statutes [46 Stat., Part 2, pp. 2907 *et seq.*, Appendix, *infra*, pp. 75-92; and Act of February 20, 1905, 15 U.S.C., Secs. 81 and 84 (copies of these seven trade-marks are exhibits to the bill, R. 25-31)], and also that four of the Bacardi trademarks, *viz.*, "Bacardi", "Bat Trade-Mark", "Ron Bacardi, Superior Carta de Oro", and "Ron Bacardi, Superior Carta Blanca", were registered on April 10, 1935,

in the office of the Executive Secretary of Puerto Rico. It is also alleged (R. 5) that "the label proposed to be used by plaintiff in Puerto Rico has been approved by the Federal Alcohol Administration under the Federal Alcohol Administration Act of August 29, 1935" (c. 814, 49 Stat. 977; "A copy of such approval" is an exhibit to the bill, R. 34), and that the plaintiff corporation was licensed to do business in Puerto Rico as a "foreign corporation" on April 6, 1936, by certificate of registration from the Executive Secretary of Puerto Rico, and also that, on July 20, 1936, it received from the Treasurer of Puerto Rico a permit for distilling, rectifying and warehousing alcohol.

The particular sections of the Acts assailed are (Prayer of the Bill of Complaint, R. 22):

"Sections 2, 3, 4 and 5 (insofar as Section 4 adds subsection (b) to section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937" [Laws of 1937, pp. 392, 393-396], "and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend." [Act No. 6 of 1936, approved June 30, 1936, appears in the Laws of Puerto Rico, Special Session, 1936, pp. 44-112; Secs. 40, 44 and 97 are, respectively, on pp. 76, 78, and 108; and see *infra*, pp. 16-19, and Appendix to our Suggestions in Opposition to the Petition for Certiorari, pp. 62-68. They are also set forth in substance in the Bill of Complaint (E. 10-15) and, as above stated, in the "margin" of the opinion of the Circuit Court of Appeals (R. 430-434; 109 F. (2d) 57, 59-62).]

The bill also sets out the substance of the Title and of Section 41 of the earlier temporary Act No. 115, the "Alcoholic Beverage Law of Puerto Rico" enacted at the regular 1936 session of the Legislature, and approved May 15, 1936, —[exactly one year earlier than Act No. 149 of 1937],— as an "emergency" act to remain in effect only until September 30, 1936, "as it contains provisions of an experi-

mental nature" (Sec. 97). Laws of 1936, pp. 610, 640-646, 678; *infra*, pp. 14-16.⁸

⁸ Under the provisions of Section 33 of the Organic Act for Puerto Rico as amended by the "Butler Act" of March 4, 1927 (44 Stat. 1418, 1420) requiring regular sessions of the Legislature to convene on the second Monday in February of each year, and to close not later than April fifteenth following, and of Section 34 of the Organic Act (39 Stat. 951, 961) providing that

"No bill, except the general appropriation bill for the expenses of the Government only, introduced in either house of the Legislature after the first forty days of the session, shall become a law",

and that (*ib.*, p. 961):

"***, and no bill shall be so altered or amended on its passage through either house as to change its original purpose",

and in view of the fact that, in the year 1936, the second Monday of February, when the Legislature convened under Section 33, fell on February 10th, and that the forty days thereafter limited by the Congress for the introduction of bills expired on Saturday, March 21st, and the expiration date for the session was April 15th [leaving the Governor thirty days thereafter within which to act on bills passed at the session; Organic Act, Sec. 34, 39 Stat., at p. 961], it is evident that the bill which ultimately became this Act No. 115, the "Alcoholic Beverage Law of Puerto Rico", approved by the Governor on May 15, 1936, must have been introduced and pending before the Legislature in the form of a bill giving substantial notice of its final provisions not later than March 21st, 1936, that is to say, a full week before the plaintiff-petitioner got its federal permit amended on March 28, 1936, so as to enable it to carry on business in Puerto Rico, and more than two weeks before it received its license to do business in Puerto Rico on April 6 [Bill of Complaint, "(7)", R. 5] and within only two weeks after plaintiff had entered into its preliminary agreement for a lease on the building on Marina Street ["(7)", R. 5-6] and more than two weeks before it had begun any expenditure in in-

Section 41 of this Act No. 115 of May 15, 1936, contained provisions substantially along the same lines as those elaborated in the later Acts No. 6 of June 30, 1936, and No. 149 of May 15, 1937, to which the plaintiff-petitioner now objects. Section 41 of Act No. 115 of May 15, 1936 [the temporary Act, the first of the three Acts of the series] contained the provisions (Laws of 1936, at pp. 640-646) quoted in the plaintiff's bill of complaint (R. 7-9) that:

"Section 41.—The Treasurer of Puerto Rico shall not issue any license prescribed by this Act for any business establishment which is less than 25 meters from a public or private school.

"B. After the thirty (30) days following the taking effect of this Act, no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. * * *.

"C. The following persons shall be entitled to permits upon application:

"(1) Every person who on February 1, 1936, possessed a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rectifying, and bottling distilled spirits, and who is" [was] "on that date engaged in said business.

"(2) Any other person who may fully comply with the following requisites:

"(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among

stalling its rectifying plant in the building, which expenditures did not begin until April 6 [Bill of Complaint, "(7)", R. 6]; and must have been actually passed by both Houses of the Legislature and sent to the Governor by the adjournment date fixed by the Congress on April 15th, before the plaintiff had incurred any substantial expenditure.

other particulars, the following specific information:

"(I) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and the insular Laws.

"(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

"(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

"(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

"(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico."

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.⁹

⁹ This absolute prohibition against using THE PROPER NAME of a famous manufacturer on the label was omitted,—and the requirements in this respect softened down,—in the second Act, Act No. 6 of June 30, 1936.

~~"(i) The production capacity of existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."~~

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

The provisions of this Section 41 of that first "experimental" Act of May 15, 1936, were elaborated [and in some respects softened down] by sections 40 and 44 of the second Act of the series, Act No. 6, *supra*, of June 30, 1936 (Laws of Special Session of 1936, pp. 44, 76, 78), which was likewise temporary in nature, to remain in effect for only fifteen months, "until September 30, 1937, as it" [likewise] "has provisions of an experimental character" (Sec. 106, at p. 112); and were again re-enacted and further somewhat elaborated by the third Act, Act No. 149 of May 15, 1937, Laws of 1937, pp. 392-396, *supra*, which the plaintiff-petitioner now assails.

The second Act, Act No. 6 of June 30, 1936, *supra*, added the provision (Sec. 44, Laws of 1936, Special Session, p. 78; Bill of Complaint, R. 10; Appendix to our Suggestions in Opposition, p. 63):

"Provided, further, That distilled spirits, with the exception *** industrial alcohol ***, may be exported from Puerto Rico only in containers holding not more than one gallon".

The third Act of the series, Act No. 149 of May 15, 1937, softened this last prohibition by permitting exportation in bulk where any rectifier "wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons" (Sec. 4, adding "Section 44(b)" to Act No. 6; Laws of 1937, p. 394; Appendix to Suggestions in Opposition, pp. 65-66; Bill of Complaint, R. 14).

That Act converted Act No. 6 into permanent legislation (Sec. 6, amending Section 106 of Act No. 6), extending it

"for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of an experimental nature" (Laws of 1937, p. 395; Appendix to Suggestions in Opposition, p. 67);

and changed the provisions of Sections 40 and 44, concerning the labeling of rum, so as to make them read (Laws of 1937, pp. 393-394; Appendix, *ibid*, pp. 65-66; *Confer*, Bill of Complaint, pp. 12-14):

"Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the

phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth ($\frac{1}{8}$) of an inch high, said phrase to be not less than one and one-half ($1\frac{1}{2}$) inches long. On the label of every alcoholic beverage shall also appear the word *distilled*, *rectified*, or *blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further*, That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears.

"Section 44.—No holder of a permit granted in accordance with the provisions of this or any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

And this further limitation to the *Proviso* in Section 44 was added by a new section (Sec. 7 of Act No. 149; Laws of 1937, p. 396; Appendix, *ibid*, p. 68):

"Section 7.—In regard to trademarks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trademarks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1st, 1936, provided such trademarks have not been used, in whole or in part,

by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date."

A "declaration of policy" was added (Sec. 1, amending Section 1 of Act No. 6; Laws of 1937, p. 393; Appendix, *ibid*, pp. 64-65); and a new sub-section [97(b)] added to Section 97, authorizing the "holder of a permit obtained under the provisions of this Act or of any other Act" to "appeal to a court of competent jurisdiction" for "protection against violations of this Act on the part of other persons" (Laws of 1937, p. 395; Appendix, *ibid*, p. 67).

Appended as an exhibit to plaintiff-petitioner's bill of complaint is a copy of a "Memorial Addressed to the Legislature of Puerto Rico by Puerto Rican Producers" (R. 39-60), dated "February, 1937," which, however, the District Court rejected when plaintiff offered it in evidence on the trial (R. 130-131).

As already stated, the ground upon which the bill of complaint assails (R. 1522) these sections of Act No. 149 [and of Act No. 6 as amended by Act No. 149] are summarized in JUDGE COOPER's opinion in the District Court (R. 95) as above quoted (*ante*, p. 2).

Answers to the Bill of Complaint

This defendant-respondent, the Treasurer of Puerto Rico, answered (R. 62-73) maintaining the validity of the statute as a valid exercise of the police powers and of the general legislative powers granted to the Legislature of Puerto Rico by the Organic Act and by the Twenty-first Amendment to the Constitution of the United States, and as necessary enactments for the control and regulation of the liquor traffic, within the powers of the Legislature, and especially of the rum industry, and not any denial of due process or of the equal protection of the laws (R. 72-73); and also, as a "separate and distinct defense" that (R. 72):

"(a) It appears from paragraph (7) of the bill of

complaint that plaintiff herein received from defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol.

"(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted him thereunder and from the effects of the said Act insofar as it provided regulation and control of the liquor traffic by the Government of Puerto Rico up to the present time without even raising any objection to the legality of the said Act."

Intervening Petition and Intervenor's Answer

The intervenor-respondent, Destileria Serralles, Inc., a corporation of Puerto Rico, manufacturing there the rum known as "Don Q," and selling it in the Island and elsewhere, filed a "Petition in Intervention" (R. 73-76), and by leave of court (R. 76-77) an answer as Intervenor (R. 77-92) asserting the validity of the statute, and setting up as its "first", and "fourth" "special and separate defenses" that (R. 91-92), *first*:

"(a) It appears from paragraph 7 of the bill of complaint that plaintiff herein received from the defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol, and intervener alleges, upon information and belief, that the said permits contain a paragraph which translated from the Spanish language, reads as follows:

"This permit is conditioned upon compliance with the provisions of the "Alcoholic Beverages Act" of Puerto Rico and with all regulations applicable in accordance with the laws now in force or which may be in force hereafter, and Federal laws and regulations applicable, and shall remain in force from the date of its issuance and until it may be suspended, revoked, annulled, surrendered voluntarily or terminated by virtue of the provisions of the laws or regulations."

"(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted it thereunder and intervener is informed and believes that plaintiff has operated under said permits";

and, fourth:

"4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that plaintiff herein is barred by his laches to assail the validity of the statutes aforesaid."

Intervenor's "second" and "third" "separate and distinct defenses" (R. 91-92) are assertions of the validity of the statute, on substantially the same grounds upon which this respondent, the Treasurer of Puerto Rico, asserted its validity in his answer (*ante*, pp. 19-20).

Hearing

A preliminary injunction was granted August 23, 1937, *pendente lite* (*recital in opinion*; R. 95); and the case came on for trial in January, 1938 (R. 93-94) on evidence taken in open court, appearing in the "Statement of Evidence" and Exhibits (R. 127-181, and 182-415). Certain original exhibits, labels, samples of advertisements and photographs, and samples of advertisements with pictures [Plaintiff's exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV" and "AW", and Intervenor's exhibits "B", "D", "E", "F", "G", "H", "I", and "J"] were transmitted to the Circuit Court of Appeals as part of the record on appeal (R. 416-419)].

EVIDENCE

Mr. Jose M. Bosch, Vice president of the petitioner, the Bacardi Corporation of America, and also Vice president of the Cuban company, Compania Ron Bacardi of Cuba, and its agent in the United States, who was born in Santiago, Cuba, and married into the Bacardi family (R.

133-134), testified generally as to the Bacardi business, its world-wide character, its advertising, and as to its entry into Puerto Rico (R. 133-174).

He first "arrived in Puerto Rico around the 22nd of February, 1936"; "came to study the possibility of establishing a plant for the production of Bacardi rum here in the Island" (R. 140). He stated the nature of the relations between the Cuban company and the Pennsylvania company, this plaintiff "Bacardi Corporation of America", and the way in which the rum is made in Puerto Rico, really under the supervision of the Cuban company (R. 133-147).

SUMMARY OF ARGUMENT

Plaintiff-petitioner, *alter ego* of the Cuban Bacardi Company, attempted to forestall Puerto Rican legislation designed to protect revival of the local rum manufacturing industry after the repeal of Prohibition; and now claims thus to have acquired "vested rights" beyond the reach of the legislation.

The Legislature of Puerto Rico possesses substantially all of the local legislative powers of a State legislature, in the respects here involved, including the police power, and particularly the power to regulate or prohibit the manufacture, transportation, sale, or delivery, or other traffic in intoxicating liquor. Petitioner is mistaken in asserting that there is some indefinite implied limitation on the powers of the Legislature, not expressed in the Congressional grant of "all local legislative powers", and that "The territory exists for the nation, not the nation for the territory". That colonial doctrine of the 16th and 17th Centuries has never obtained in the United States.

The police power as habitually exercised by the State legislatures extends to the enactment of laws to promote good order and the general welfare of society; as well as the safety, health, and morals of the community.

The Twenty-first Amendment leaves the States and Territories free to adopt and enforce such regulations as they may see fit concerning "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors", and expressly forbids violations of local laws. This court has decided in the *Ziffren* case, that a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of where or when produced, or obtained, or the use to which they are to be put, and may adopt measures reasonably appropriate to effectuate these inhibitions and may exercise full police authority in respect of them; and that, having power absolutely to prohibit, it may also permit these things under definitely prescribed conditions, and may exercise large discretion as to the means to be employed.

The commerce clause does not extend to Puerto Rico, since it relates only to the several States. The plenary power of the Congress to regulate the commerce of Puerto Rico, both internal and external, is derived, not from the commerce clause, but from the provision of Article IV of the Constitution empowering it to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States".

The validity of this Territorial legislation depends on the broad legislative powers which the Congress has delegated to the Legislature.

Even the States of the Union, expressly bound by the commerce clause, are not prevented by it from legislating, in the exercise of their police powers, with relation to intoxicating liquors; forbidding, for example, the manufacture of such liquors within the State, or making such regulations as the Legislature may see fit concerning their production.

The fact that the Congress itself has chosen not to

legislate in any particular field does not imply any prohibition against the Legislature of Puerto Rico enacting local legislation in that field; nor does the fact that the Congress has chosen to legislate generally in any particular field imply any prohibition against the Legislature of Puerto Rico enacting local legislation in the same field, so long only as the local insular legislation does not conflict with the legislation of the Congress. This court has so decided in the *Shell Company* and the *Rubert Hermanos* cases.

This insular legislation does not conflict in any way with the Federal Alcohol Administration Act. The lower courts, the District Court as well as the Circuit Court of Appeals, rightly so held. On its face, the federal Act contains no grant of powers to permittees under it. It is wholly prohibitory: "It shall be unlawful, unless", etc., etc., in the different sections. There is nothing to prevent an individual State or Territory from adding additional restrictions. To the contrary, its wording in several places, expressly contemplates possible additional requirements of "State law".

These Acts of the Legislature of Puerto Rico do not contravene the General Inter-American Convention for Trade Mark and Commercial Protection, to which Cuba and the United States are parties, which was signed in 1929 and proclaimed in 1931. That Convention does not give any greater rights within the United States to the registrant of a mark in a foreign country than to original registrants in the United States. The District Court rightly held that "The Treaty gives no preferential advantage to a citizen of Cuba"; with which the Circuit Court of Appeals rightly agreed. In any event it does not appear that petitioner's "silver label", "Carta de Plata", which it desires to use in Puerto Rico, has ever been registered in Cuba or outside of the United States so as to be entitled to the protection of the Treaty in any

way. The general purpose of the Treaty is simply to prevent piracy of marks and unfair competition.

This insular legislation does not violate the due process clause of the Fifth Amendment nor the provisions of the first clause of Section 2 of the Organic Act guaranteeing due process and equal protection of the laws. The Circuit Court of Appeals correctly so held. In any case no actual deprivation of property is here involved, since this petitioner corporation, the *alter ego* of the Cuban company, was not doing business in Puerto Rico before the legislation was introduced. With full notice, it attempted to create supposed "vested rights" while the legislation was pending, and by increasing its investment after actual enactment of the first and second Acts of the series.

This legislation is valid. The decision of the Circuit Court of Appeals was right, and should be affirmed.

ARGUMENT

Background

After the repeal of prohibition, Puerto Ricans set about reviving the island's ancient rum industry. They were handicapped by the loss of their markets during the prohibition era, and by all of the difficulties incident to establishing a new manufacturing business. They possessed the advantage for our mainland markets of manufacturing within the United States tariff wall. Foreign companies already in possession of the market and financially established, desired also to secure the tariff advantage by starting plants in United States territory. One or two foreign companies came to Puerto Rico, indicating what might follow. The Legislature moved to protect the local industry by forbidding the use of foreign labels on liquors distilled in Puerto Rico, and preventing evasion of that regulation by forbidding shipments in bulk. The Cuban corporation Compañía Ron Bacardi, through this corporation which it organized

in the United States, in Pennsylvania, sought to forestall this legislation by establishing itself in Puerto Rico while the legislation was under consideration. Its vice-president went to Puerto Rico during the session of the Legislature at which the legislation was introduced; and, **while the bill was pending**, got its federal permit amended so as to empower it to enter business in Puerto Rico, and then took out a license under the insular laws for it to do business there as a foreign corporation, and began an investment there; increased it after the passage of the Act; and began manufacturing under a distiller's permit taken out under that Act, but after the second Act was passed. After operating under that permit until the third Act had made the temporary legislation permanent, petitioner now assails the legislation, claiming that it has acquired "vested rights" beyond the legislative reach. [Confer "Statement," *ante*, pp. 10 *et seq.*].

Point I

The Legislature of Puerto Rico possesses substantially all of the local legislative powers of a State legislature, in all the respects here involved, including the police powers, and particularly the power to regulate or prohibit the manufacture, transportation, sale or delivery or other traffic in intoxicating liquors.

A. This court said in *People of Puerto Rico vs. Shell Co.*, 302 U. S. 253, decided December 6, 1937 (at pp. 260-262):

"1. Section 14 of The Foraker Act, passed April 12, 1900, c. 191, 31 Stat. 77, 80, provided that the statutory laws of the United States, not locally inapplicable, should have the same force and effect in Puerto Rico as in the United States, with certain exceptions not material here. Section 27 (p. 82) provided 'That all local legislative powers hereby granted shall be vested in a legislative assembly * * *.' And by Section 32 (p. 83-84), it was provided that the legislative authority 'shall extend to all matters of a legislative character

not locally inapplicable * * *. These various provisions are continued in force by Sections 9, 25 and 37 of the Organic Act of March 2, 1917, c. 145, 39 Stat. 951. These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, in respect to which this court said in *Clinton v. Englebrecht*, 13 Wall. 434, 441, that the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; and in *Hornbuckle v. Toombs*, 18 Wall. 648, 655-656, we said: 'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature'. See also *Cope v. Cope*, 137 U. S. 682, 684, where this court, speaking of this typical general provision contained in the Utah Organic Act, said that, with the exceptions noted in the provision itself, 'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State.' In *Maynard v. Hill*, 125 U. S. 190, 204, the essential similarity of the various provisions in respect of the powers of territorial legislatures was pointed out, and it was said that what were 'rightful subjects of legislation' was to be determined 'by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represented.'

"The grant of legislative power in respect of local matters, contained in Section 32 of the Foraker Act and continued in force by Section 37 of the Organic Act of 1917, is as broad and comprehensive as language could make it. The primary question posed by the challenge to the validity of the act under consideration is whether the matter covered by the act is one 'of a legislative character not locally inapplicable.' * * *.

"2. The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories. *Gromer v. Standard Dredging Co.*, 224 U. S. 362, 370; *Porto Rico*

v. Rosaly y Castillo, supra" [227 U. S. 270], "p. 274. The effect was to confer upon the territory many of the attributes of quasi-sovereignty possessed by the states—as, for example, immunity from suit without their consent. *Porto Rico v. Rosaly, supra*. By those acts, the typical American governmental structure, consisting of the three independent departments—legislative, executive and judicial—was erected. 'A body politic'—a commonwealth—was created. 31 Stat. 79, Sec. 7, c. 191. The power of taxation, the power to enact and enforce laws, and other characteristically governmental powers were vested. And so far as local matters are concerned, as we have already shown in respect of the continental territories, legislative powers were conferred nearly, if not quite, as extensive as those exercised by the state legislatures."

See also, to the same effect, the recent decision, March 25, 1940, in *People of Puerto Rico vs. Rubert Hermanos, Inc.*, 309 U. S. 543, 547-549.

B. There is no further, indefinite limitation upon the Legislature's local legislative powers, outside of limitations contained in the Acts of Congress, such as the petitioner suggests, because of the mere fact that Puerto Rico is a Territory, and not a State.

Petitioner says (*Brief*, p. 22):

"The territory exists for the benefit of the Nation; not the Nation for the territory.

"Territorial law must always yield to national law in case of a direct conflict. It appears equally apt to suggest that the local law must fall where it ventures into fields which it was never intended to penetrate."
(*Italics supplied*)

Petitioner is reverting to the doctrine of the Seventeenth and Eighteenth Centuries, as to the relation of colonies to the mother country. It has never been the doctrine of this country that "The territory exists for the benefit of the Nation". That was the doctrine that made the Thirteen Colonies revolt. The doctrine of this country has always

been directly to the contrary. Our government, in the Territories as well as in the States, exists for the people; not the people for the government. President McKinley said in his directions, April 7, 1900, to the Philippine Commission

"In all * * * the government which they are establishing is designed not for our satisfaction, or for the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands, * * * to conform to their customs, their habits, and even their prejudices, to the fullest extent consistent with the accomplishment of the indispensable requisites of just and effective government."

and General Miles in his Proclamation to the People of Puerto Rico when he landed with his Army at Ponce on July 28, 1898, promised:

"We * * bring you protection, not only to yourselves but to your property, to promote your prosperity, and bestow upon you the immunities and blessings of the liberal institutions of our government." (Annual Report, Commanding General of the Army, 1898, pp. 51-52).

That has always been the spirit of our government with relation to the Territories; and its settled policy. It is the spirit in which this court, in the *Shell Company* case and in

¹³ *People of Puerto Rico vs. Shell Co.*, 302 U. S. *supra*, 253, 260-263; *People of Puerto Rico vs. Rubert Hermanos, Inc.*, *supra*, 309 U. S. 543, 547-549. In the *Shell Company* case this court quoted (*ante*, p. 27) what had been said in *Clinton vs. Englebrecht*, 13 Wall. 434, 441, that the theory upon which the Territories have been organized "has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress"; and cited and quoted other cases indicating the settled policy of our people. It is not just "By Custom," as petitioner suggests (*Brief*, p. 21). It is the established policy of our government from its earliest foundation.

the recent *Rubert Hermanos* case¹³ interpreted the broad grant of legislative powers which the Congress gave to the Legislature of Puerto Rico by the Organic Act of 1917, as well as to the earlier Legislative Assembly by the Foraker Act of 1900.

There is nothing in that interpretation by this court even remotely suggesting any such idea as the petitioner advances, either that "The territory exists for the benefit of the Nation"; or that, in addition to the established rule that Territorial law must always of necessity yield to national law in case of a direct conflict, there is any further indefinite, or implied, limitation on the powers of the Legislature, such as counsel suggest, wherever in the opinion of counsel the Legislature has "ventured into fields into which it was never intended to penetrate". The powers of the Legislature are defined by law, by the Organic Act and other Acts of Congress. They are capable of determination by reference to the language of the Acts. They are not subject to further indefinite limitation by guess-work, or by philosophic speculation as to "fields which it was never intended to penetrate".

Point II

In the exercise of the police power in local legislation the State legislatures exercising all of the unlimited powers of the English Parliament, except in so far as their powers may be expressly limited by the State constitution or by the Federal Constitution or by Congressional legislation pursuant to Constitutional power.

This Court has said:

"* * * the States possess all the powers of the Parliament of England, except such as have been delegated to the United States or reserved by the people."

Munn v. Illinois, 94 U. S. (4 Otto) 113, 124
(WAITE, CH. J.)

Point III

The police power, as habitually exercised by the State legislatures, extends to the enactment of laws to promote good order and the

general welfare of society, as well as the safety, health and morals of the community.

It extends, particularly, to the enactment of laws for the regulation, transportation, sale and delivery of intoxicating liquors.

Point IV

The Twenty-first Amendment to the Constitution leaves the States and Territories wholly free to adopt and enforce such regulations as they may see fit concerning "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors", and expressly forbids violations of such local laws.

The purpose of that provision in Section 2 of the Amendment is

"to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes". *State Board of Equalization of California vs. Young's Market Co.*, 299 U. S. 59, 62; *Mahoney, Liquor Control Commissioner of Minnesota vs. Joseph Triner Corp.*, 304 U. S. 401, 403, 404.

And, as was held in *Ziffrin, Inc. vs. Reeves*, 308 U. S. 132, 138-139:

"Without doubt a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them * * *."

"Having power absolutely to prohibit manufacture, sale, transportation or possession of intoxicants, was it permissible for Kentucky" [Puerto Rico] "to permit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. The greater power includes the less. * * * The State may * * * exercise large discretion as to means employed."

Point V

The commerce clause is not applicable to Puerto Rico. It relates only to commerce "among the several States" of the Union.

A. The Circuit Court of Appeals for the First Circuit said in *Lugo vs. Suazo*, 59 F. (2d) 386, 390, June 7, 1934 [followed in its opinion in the present case; R. 435-436; 109 F. (2d) 57, 62-63]:

"The commerce clause does not extend to Puerto Rico."

B. The language of the commerce clause is (Clause 3, Section 8, Article I):

"The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

C. Manifestly, that language relates only to the States of the Union, and to commerce among themselves and with foreign nations and with the Indian tribes. The Circuit Court was plainly correct, therefore, in its holdings in the *Lugo vs. Suazo case, supra*, and in the present case, that the commerce clause does not extend to Puerto Rico.

D. It follows that the District Court was in error in holding in this case that the Acts of the Legislature of Puerto Rico here involved are violative of the commerce clause of the Constitution (R. 104-105, 116 ["14"]); and that the Circuit Court of Appeals was right in overruling the District Court, in this respect. The commerce clause is not here involved.

E. The constitutional relation between the legislative jurisdiction of the Congress and that of the Legislature of Puerto Rico is vitally different in this respect from the Constitutional relation between the legislative jurisdiction of the Congress and that of the State legislatures. In determining the validity of a Puerto Rican statute the question is not whether it invades the commerce clause, or invades powers which, with relation to the States, are exclusively vested in the Congress; but the test is simply whether it exceeds the powers granted to the Puerto Rican Legislature by the Organic Act and other Acts of Congress.

F. Puerto Rico is not a "State" within the meaning of

that term as it is employed in the commerce clause and elsewhere in the federal Constitution, as, for example, in the Fourteenth Amendment.

Puerto Rico is a Territory of the United States; an organized Territory, although not yet formally "incorporated" into the Union. *People vs. Shell Co., supra*, 302 U. S. 253, 257-259. In legislating with respect to Puerto Rico the Congress acts by virtue of the authority given it by Article IV, Section 3, clause 2, of the federal Constitution, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". The federal Constitution applies to Puerto Rico in a general sense only,—in the sense that, as was observed by CHIEF JUSTICE TAFT in the *Balzac* case (*Balzac vs. People of Porto Rico*, 258 U. S. 298, 312) :

"The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. * * *. The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements."

Many of its provisions are inapplicable in or to Puerto Rico, either because of express terms that limit their application to the States [such as the commerce clause and the Fourteenth Amendment] or to other subjects not pertinent in any way to the Territories, or to a Territory such as Puerto Rico not yet formally "incorporated" into the Union; or because, not being in their nature among those clauses which embody "guaranties of certain fundamental personal rights declared in the Constitution" [*Balzac vs. Porto Rico, supra*, 258 U. S. 298, 312], some of the pro-

visions of the Constitution do not limit the action of the Congress in legislating, under Article IV, for the "Territory or other Property belonging" to the United States. For example, this Court has held inapplicable in or to Puerto Rico the provisions of the Fifth Amendment prohibiting criminal prosecutions without prior indictment (*Porto Rico vs. Tapia* and *Porto Rico vs. Muratti*, 245 U. S. 639), the provisions of the Sixth Amendment guaranteeing the right of trial by jury (*Balzac vs. Porto Rico*, *supra*, 258 U. S. 298), the provisions of Article I, Section 8, Clause 1, requiring that all duties, imposts and exercises shall be uniform throughout the United States (*Downes vs. Bidwell*, 182 U. S. 244), and the provisions of Article I, Section 9, Clause 5, that no tax or duty shall be laid on articles exported from any State (*Dooley vs. United States*, 183 U. S. 151).

G. Of course, with respect to the regulation of commerce between Puerto Rico and the States, as well as between Puerto Rico and other Territories, and with foreign nations, the Congress possesses, under the "territorial clause" above mentioned (Article IV, Section 3, Clause 2), the same complete and exclusive powers it possesses, under the "commerce clause", with relation to interstate commerce between the States of the Union. *There remains, however, a sharp distinction between the principles involved*, on the one hand, in a determination whether a statute of a State invades the exclusive power of the Congress under the commerce clause of the federal Constitution and other clauses relating to the States of the Union, and, on the other hand, those principles affecting a determination of the question whether a statute of the Puerto Rican Legislature exceeds the powers which the Congress has granted to that body by the Organic Act.

This is because, in the case of Puerto Rico, the Congress has by the Organic Act (Secs. 25 and 37, Act of March 2, 1917, 39 Stat. 951, 958, 964; Appendix to Suggestions in Opposition, p. 55) dele-

gated all of its own local legislative powers with respect to that Island to the insular Legislature, except as otherwise prescribed or limited by that Act or other acts of the Congress.

It follows that the Legislature of Puerto Rico, in legislating locally for the government and the people of Puerto Rico can do anything which the Congress itself could do, except in so far as otherwise limited by the Organic Act or other acts of Congress. *Haavik vs. Alaska Packers Association*, 263 U. S. 510, 514; *Rafferty vs. Smith, Bell & Co.*, 257 U. S. 226, 232; *United States vs. Heinszen & Co.*, 206 U. S. 370, 385-386; *People vs. Shell Co., supra*, 302 U. S. 253, 259 et seq; *People of Puerto Rico vs. Rubert Hermanos, Inc., supra*, 309 U. S. 543, 547-549.

H. Hence The Legislature of Puerto Rico in legislating, as in the Acts here in question, in the exercise of its police powers, for the public welfare of Puerto Rico, the protection or development of its local industries, or for the health or welfare of its people, is, in so far as the "commerce clause" is concerned, or in so far as commerce between Puerto Rico and the States or foreign nations is concerned, restrained only by the provisions of the Organic Act, or other pertinent acts of Congress, if any; and is not, as is the legislature of a State, confronted with the barrier of exclusive jurisdiction over interstate commerce vested in the Congress by the "commerce clause" of the Constitution.

I. Any question of whether a Puerto Rican statute affecting overseas commerce with the Island, or between the Island and the mainland, or with other Territories, is invalid because of supposed conflict with the legislative jurisdiction of the Congress, is to be determined, not by any reference to the commerce clause of the federal Constitution and the many judicial interpretations of that clause and its bearing on State statutes, but, on the contrary, is to be determined solely by reference to the powers and limitations of the Puerto Rican Legislature prescribed by the Organic Act and other acts of the Congress.

J. Direct regulation of interstate commerce is a field of legislative jurisdiction barred to the States of the Union by the commerce clause of the federal Constitution. It is a field into which they cannot enter, even where it has been left unoccupied by the Congress, excepting in so far as they are permitted to impose reasonable regulations in the exercise of their legitimate police powers. On the other hand, in the case of the Legislature of Puerto Rico, the situation is exactly reversed. In the latter case, the Congress having extended a general grant of all of its own local legislative powers to the Puerto Rican Legislature, subject only to specified statutory exceptions and limitations, the Legislature can enter into and occupy any part of the field from which it is not excluded by some express provisions of the Organic Act, or by some other act of Congress, if any there be, limiting its powers in the direction in question. *People of Puerto Rico vs. Shell Co.*, *supra*, 302 U. S. 253, 259-263; *People of Puerto Rico vs. Rubert Hermanos, Inc.*, *supra*, 309 U. S. 543, 547-549.

K. Petitioner suggests (*Brief*, p. 61) that the words "the several States" in the Constitution may be construed to include "Territories". But its citations fail to support the suggestion. For instance, it cites *Talbott v. Silver Bow County*, 139 U. S. 438, 444. But that case holds simply (at pp. 443-444) that, inasmuch as Section 6 of the National Bank Act of 1864 (c. 106, 13 Stat. 99, 101; reenacted in Rev. Stats., Sec. 5134) providing the places where national banks might be organized, provided for them in "any State, *Territory or district*" [*italics supplied*], therefore, a subsequent taxing section of the Act should be construed as extending also to the Territories, because, as the court there said:

"Further it is a general rule in the construction of statutes that when in the earlier and declaratory sections the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent

section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges".

Point VI

Even the States of the Union bound by the commerce clause of the Constitution are not prevented by it from legislating in the exercise of their police powers, with relation to intoxicating liquors, forbidding, for example, the manufacture of such liquors within the State or making such regulations as the Legislature may see fit concerning their production within the State.

A. The legislature may in the exercise of its police powers forbid manufacturing such products within the State, or putting them into the stream of interstate commerce, within the State, except upon such terms and conditions as it may direct. *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 138-139.

So also, with relation to food products, such as oleomargarine, unless so packed and labeled as to prevent deception or confusion.

B. The commerce clause does not prevent the exercise of the State's local police power, so long as it does not conflict with legislation of the Congress upon the particular subject. *Milk Control Board of Pennsylvania vs. Eisenberg Farm Products*, 306 U. S. 346, 351-352; *Chassoniol vs. City of Greenwood*, 291 U. S. 584, 587; *Hammer vs. Dagenhart*, 247 U. S. 251; *Bacon vs. Illinois*, 227 U. S. 504; *Savage vs. Jones*, 225 U. S. 501, 533; *Western Union Tel. Co. vs. Crovo*, 220 U. S. 374; *N. Y. & N. H. vs. N. Y.*, 165 U. S. 628; *Gulf C. & S. F. R. Co. vs. Hesley*, 158 U. S. 98; *Coe vs. Errol*, 116 U. S. 517.

Point VII

The fact that the Congress itself has chosen not to legislate in any particular field does not imply any prohibition against the Legislature of Puerto Rico enacting local legislation in that field; nor does the fact that the Congress has chosen to legislate generally in any par-

ticular field imply any prohibition against the Legislature of Puerto Rico enacting local legislation in the same field; so long as the local insular legislation does not conflict with the legislation of the Congress.

This Court expressly so held in the *Shell Company* case. The court there said (*People of Puerto Rico vs. Shell Co., supra*, 302 U. S. 253, 263):

"In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act, and Sec. 32 of the Foraker Act. Nothing is expressed in these acts or, so far as we are advised, in any other federal act which suggests a congressional intent to limit the exercise of the power of local legislation to those subjects in respect of which there is an absence of explicit legislation by Congress; and we find nothing in the nature of the power or in the consequences likely to ensue from the duplicate exercise of it which requires an implication to that effect."

And see also, to the same effect, the recent decision in *People of Puerto Rico vs. Rubert Hermanos, Inc., supra*, 309 U. S. 543, 547-549.

Point VIII

There is nothing in the acts of the Legislature of Puerto Rico here involved in conflict in any way with the Federal Alcohol Administration Act.

A. The District Court refused to find with the plaintiff-petitioner corporation on this issue. To the contrary, the court refused a "conclusion of law" on this point requested by the

plaintiff. Plaintiff saved a formal exception to the court's refusal (R. 117-118), but did not assign any cross-errors in the Circuit Court of Appeals. This question, therefore, is not properly here in issue in this case, and was not properly before the Circuit Court. That court, nevertheless, considered it, and agreed with the District Court that there is no violation of the Federal Act. [Opinion, R. 436-438; 109 F. (2d) 57, 63-64].

B. On its face the Federal Alcohol Administration Act contains no prohibition against the States adding additional requirements or prohibitions not in conflict with those prescribed by the federal act. (Act of August 29, 1935, c. 814, 49 Stat. 977 *et seq.*)

To the contrary, its wording expressly contemplates possible additional requirements of "State law" [e.g. Sec. 4(a)(2)(C), and Sec. 5(e)(2), and also *ib.*, par. 2; 49 Stat. at pp. 979, 982, 983; Appendix, Suggestions in Opposition, pp. 57, 58, 59].

C. Clearly, therefore, the District Court and the Circuit Court were right in refusing to consider the Federal Alcohol Administration Act as having any bearing in this case. The approval of plaintiff's "Carta de Plata" label (Plaintiff's Exhibits "N-1" and "N-2") by the Federal Alcohol Administration (Plaintiff's Exhibit "N") is immaterial here. The administrator's approval was not intended to authorize the plaintiff to override the local Territorial law. It does no such thing.

D. The only supposed "conflicts" which petitioner suggests between the local statute and the federal Act are: (a) That (*Brief*, p. 56) the federal "basic permit" for petitioner to ship rum from Puerto Rico to the United States "does not restrict the size of the containers which may be used in shipment", and that "The act itself contains no such restriction" [except the restriction in Section 6 against shipments in bulk by persons not licensed at all]; and (b).

That (*Brief*, p. 59) "petitioner has been specifically authorized by the administrator of the federal act to use a certain label, the essential part of which Puerto Rico specifically forbids to be used". And petitioner contends (*ib.*, p. 59) that, "If petitioner were compelled to comply with the Puerto Rican act and remove its name from the label it would be violating the federal act".

E. Petitioner apparently misapprehends the purpose and effect, both of the federal Act, and also of the provisions of the local Act in relation to the use of petitioner's own name on the label. There is no prohibition against it (*confer, infra*, "G", pp. 40-41).

F. The federal Act is not a grant of rights. To the contrary it is a series of prohibitions, coupled with permissive exceptions. "*It shall be unlawful, unless,*" [etc., etc., in its different sections]. For example, there is no grant anywhere in the federal statute of any affirmative right to the permittee to ship in bulk. There is simply the federal prohibition against it, *unless* a permit is secured. As above noted ("B", *ante*), there is no prohibition against the individual States imposing additional requirements or prohibitions. Indeed, the federal Act itself apparently contemplates the existence of additional State restrictions. See, for examples: Section 4 (a) (2) (C) [*Appendix to our Suggestions in Opposition*, p. 57], *unless* "the operations proposed * * * are in violation of the law of the State"; Section 5 (e) (2) [*Appendix ib.*, p. 58], "unless required by State law"; and the second paragraph of Section 5 [*Appendix, ib.*, p. 59], "except * * pursuant to regulations * * * for purposes of compliance with * * * or of State law".

G. Petitioner appears to be simply mistaken in its interpretation of the Puerto Rican statute, in saying that (*Brief*, p. 57, *supra*), "The federal approval" of its label "is grounded in large part upon the fact that the label

identifies petitioner with the product", and that "the Puerto Rican statute forbids this very thing". Petitioner apparently still harbors the same mistaken idea, that the Puerto Rican statute forbids petitioner from using its own name on its label, which it expressly stated in its former Brief in Support of its Petition for Certiorari (pp. 23-24) where it expressly claimed that,

"Thus the federal regulations *require* petitioner's use of its name upon the label. The Puerto Rican statute *prohibits* petitioner's use of its name upon its label." (*Italics are petitioner's own*)

The error of that contention [which petitioner does not now expressly repeat in its present brief, but apparently still relies upon, indirectly, as above stated] was pointed out in footnote 7 (pp. 9-10) to our "Suggestions in Opposition", where it was said:

"But petitioner misstates the Puerto Rican statute. It does **not** prohibit the use of the manufacturer's name upon its label. To the exact contrary, it **expressly requires** (Sec. 40 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937)" [*ante*, pp. 17-18]:

"'Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars:
 * * * the name of the bottler or canner. * * * ; *Provided, further*, That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears' ". (*Emphasis supplied*)

H. This court stated the test in *Savage v. Jones, supra*, 225 U. S. 501, 533-534, as follows:

"Is, then, a denial to the State of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether

a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purposes of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Northern Pacific Ry. Co. v. Washington*, *supra* [222 U. S. 370, 378]; *Southern Ry. Co. v. Reid*, *supra* [222 U. S. 424, 436].

“But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State. This principle has had abundant illustration. *Chicago etc. Ry. Co. v. Solan*, 169 U. S. 133; *Missouri, Kansas & Texas Ry. Co. v Haber*, 169 U. S. 613; *Reid v. Colorado*, 187 U. S. 137; *Pennsylvania R. R. Co. v. Hughes*, 191 U. S. 477; *Grossman v. Lurman*, 192 U. S. 189; *Asbell v. Kansas*, 209 U. S. 251; *Northern Pacific Ry. Co. v. Washington*, 222 U. S. 370, 379; *Southern Ry. Co. v. Reid*, 222 U. S. 424, 442.

I. The “Corn Syrup” case from Wisconsin [*McDermott v. Wisconsin*, 228 U. S. 115, 131-132] which petitioner quotes [*Brief*, p. 58] is not to the contrary. And, besides, that case dealt with *importations* into the State, from other States, and this court there followed its long-established doctrine that the local State statute could not be so enforced as to override a federal statute, enacted under the commerce clause, permitting the goods to be brought in. As to intoxicating liquors, that rule has now been reversed by the Twenty-first Amendment.

Point IX

The acts of the Legislature of Puerto Rico here in question are not in conflict in any way with the Convention between the United States and Cuba proclaimed February 27, 1931 ("Treaty Series" 833; 46 Stat., Pt. 2, p. 2907).

A. As above pointed out [*ante*, pp. 2, 3] the Circuit Court of Appeals determined (R. 438) that the District Court had correctly so held in refusing the proposed "conclusion of law" which the plaintiff requested on this point [to which refusal the plaintiff-petitioner saved a formal exception (R. 118), but has assigned no cross-error]. The District Judge said in his opinion (R. 105):

"It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power."

B. In so holding the District Judge was clearly right, as the Circuit Court says [R. 438, *supra*; 109 F. (2d) 57, 64]. The purpose of the Convention was to prevent piracy of trade-marks, which is not here involved in any way. Unlike a patent, the registration of a trade-mark under the federal Act is not the grant of a positive right to use the registered mark, and does not authorize the registrant to project the trade-mark into new territory in violation of the local laws. The acquisition of property rights in trade-marks rests upon the laws of the several States and Territories. *American Trading Co. vs. Heacock Co.*, 285 U. S. 247, 257-258; *United Drug Co. vs. Rectanus Co.*, 248 U. S. 90, 98; *American Steel Foundries vs. Robertson*, 269 U. S. 372, 381; *United States Printing & Lithograph Co. vs. Griggs, Cooper & Co.*, 279 U. S. 156, 158. Confer also *Hanover Star Milling Co. vs. Metcalf*, 240 U. S. 403, 412.

C. Petitioner's counsel now specifically admit (*Brief*, p. 28) that:

"Under the common law, a trade-mark is not recognized as an independent property right disconnected from the business in which it is used. *** Registration does not create the right to use the trade-mark. It is allowed in recognition of a right already acquired by appropriation and use";

but they contend that the effect of the Treaty,—and particularly of the language of the sentence in Article 11 upon which they dwell: "The use and exploitation of trade-marks may be transferred separately for each country",—is to override this established rule of the trade-mark law in the United States, and to import into the United States the law of the particular country where the mark is first registered,—in this case, that of Cuba; so as to give to the holder of a trade-mark originally registered in a foreign country greater rights in the United States, upon registering his mark under the Treaty, than an American citizen would have under an original registration here. Counsel say (*Brief*, p. 28):

"Under the civil law, registration is ordinarily all important and the right to use the mark is dependent upon prior registration and not prior use. Once registered under the civil law, the registrant acquires all the substantive rights which prior use in connection with a product or business confers in the common law countries.

"This treaty attempts to reconcile the differing concepts of the two different legal systems and thereby to secure the utmost in protection to those entitled to use the trade-marks in the countries of their origin. 'Every mark duly registered or legally protected' in the country of origin 'shall be admitted to registration or deposit and legally protected' in the other countries adhering to the treaty. (Article 3) We construe this language to mean that the registration under the federal statutes or in Puerto Rico of a trade-mark originally registered in Cuba preserves both nationally and

in Puerto Rico those substantive rights which registration gave in the country of origin.” (Italics supplied)

Counsel say also (*Brief*, p. 28, top of the page) with specific reference to Article 11 of the Treaty, that that Article “when read with Article 3”,

“recognizes a substantive right in trade-marks, separate and apart from the business with which they were originally identified. In so doing it adds to the common law concepts of trade-marks, some of the principles of the civil law prevailing in Latin American countries”;

and again they say (*ib.* p. 29):

“Another recognition by the treaty of the civil law standards *which the common law did not theretofore recognize* is the right given by Article 11 to use and exploit the trade-marks *separately*. Article 3 and Article 11, taken together evidence an intention that the owner of a trade-mark shall receive the same protection and have the same latitude in dealing with the mark in all other countries that are parties to the treaty, that he is entitled to claim in his own country. Rights thus granted are reciprocal in the truest sense and the only requirements are that they be so registered in each country where protection is sought.” (*Italics supplied*)

In other words, Petitioner’s contention is that, as above noted, the effect of the Treaty is to override the trade-mark laws of the United States, and of the individual States and Territories, and to import into them the trade-mark law of whatever foreign country a registrant may choose as the place for the initial registration of his mark,—in this case, the trade-mark law of Cuba. But:

FIRST. It does not appear, anywhere in this record, what the law of Cuba actually is; and, more importantly,

SECOND. The language of the Treaty does not support the Petitioner’s contention.

D. The Treaty is in the Appendix to this brief (*infra*, pp. 75-92). The abbreviated extracts in petitioner's brief (pp. 24-26) are not sufficient fully to reflect its spirit and purpose in this regard. *Taken as a whole, the Treaty evinces no intent whatever to override the local laws of any one of the signatory countries; but only to provide that registration under the Treaty shall give to the registrant, in each of the signatory countries, whatever rights,—no more and no less,—he would have acquired in that particular country if he had originally registered his mark as an original registration there, on the same date on which he first registered it in any one of the other signatory countries.* In other words, the basic purpose was simply to prevent piracy of marks, and to give to the registrant of any mark, upon originally registering it in any one of these countries, the right to international registration, by the means provided in the Treaty, with *exactly the same effect in each country, under its own local laws*, as though he had actually been an original registrant in that country upon the same date on which he actually made his first registration in any one of them.

That does not override the local laws of any one of them; nor import the local laws of any one of them into any other of the signatory countries. It does not disturb any of the local laws; nor give, in anyone of the countries, greater local rights to an international registrant, or to one who has first registered his mark in some foreign country, than are enjoyed locally, in his own country, by a registrant who registers his mark solely in his own country, and not elsewhere. In other words, the Treaty does not give to an American individual or company choosing to register its mark internationally, nor to an alien individual or corporation first registering its mark in some foreign country signatory to the Treaty [as, here, in Cuba] and then asking protection for it under the terms of the Treaty, any greater or different rights in the United States or in any of its States or Territories, than are acquired by an American citizen or an

American corporation registering its mark in the United States under the Trade-Mark Act of Congress of 1905 as amended, and not registering it in any foreign country.

E. Portions of the Treaty that appear to be pertinent here are (*Appendix, infra*, pp. 75, 76, 77, 81-82, 88, 90-91) the following provisions in the Preamble, and in Articles 1, 3, 10, 11, 29, and 35; and the definition of "ownership" contained in the "Eighth Resolution" ("Glossary"), in the accompanying "Final Act":

PREAMBLE:

"Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

"Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

"Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indications of geographical origin, and for this purpose have appointed as their respective delegates, [Here follow the names of the delegates.]

"Article 1.

"The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention **the same rights and remedies which their laws extend to their own nationals or domiciled persons** with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source. (*Emphasis supplied*)

"Article 3.

"Every mark duly registered or legally protected in one of the Contracting States shall be admitted to

registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

"Registration or deposit may be refused or cancelled of marks:

"1. The distinguishing elements of which infringe rights already acquired by another * * * .

"Article 10.

"The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

"Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

"Article 11.

"The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

"The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

"Article 29.

"The manufacture, exportation, importation, dis-

tribution, or sale is forbidden of articles or products which directly or indirectly infringe any of the provisions of this Convention with respect to trade mark protection; protection and safeguard of commercial names; repression of unfair competition; and repression of false indications of geographical origin or source.

"Article 35.

"The provisions of this Convention shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs.

"The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Convention, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

"FINAL ACT

"The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan American Trade Mark Conference, assembled at Washington pursuant to the Resolution adopted on February 15, 1928, at the Sixth International Conference of American States, held in the City of Habana, and the Resolution adopted by the Governing Board of the Pan American Union at Washington, on May 2, 1928, designated the delegates hereinafter named:" [Here follow the names of the delegates.]

"EIGHTH RESOLUTION

(February 19, 1929)

"Glossary

"Reso'ved, That the following glossary be followed in the interpretation of terms contained in the General Inter-American Convention on Trade Mark and Com-

mercial Protection, and in the Protocol on the Inter-American Registration of Trade Marks, approved by the Conference:

* * *

"Ownership: as applied to trade marks means the right acquired by registration in countries where the right to a trade mark is so acquired and the right acquired by adoption and use in countries where the right to a trade mark is so acquired." (*Emphasis supplied*)

F. The Federal Trade-Mark Law of the United States in force at the time of the signature of this Treaty in 1929, and of its proclamation in this country in 1931, as well as ever since, provided (Sec. 1, Act of February 20, 1905, c. 592, 33 Stat. 724, as amended; 15 U. S. C. 81):

"That the owner of a trade-mark used in commerce with foreign nations, or among the several States, or with Indian tribes, provided such owner shall be domiciled within the territory of the United States, or resides in or is located in any foreign country which, by treaty, convention, or law, affords similar privileges to the citizens of the United States, may obtain registration for such trade-mark by complying with the following requirements: First, by filing in the Patent Office * * *."

And Section 4 of the same statute of February 20, 1905, in force at the time of the signature and of the proclamation of this Treaty in 1928 and 1931, provided (c. 592, 33 Stat. 725, 725):

"An application for registration of a trade mark filed in this country by any person who has previously regularly filed in any foreign country which by treaty, convention, or law affords similar privileges to citizens of the United States an application for registration of the same trade mark shall be accorded the same force and effect as would be accorded to the same application if filed in this country on the date on which

application for registration of the same trade mark was first filed in such foreign country:"¹¹

G. Petitioner's contention that the effect of the Treaty is to override or change the law of the United States, in so far as it relates to trade marks originally registered in one of the other signatory countries, is, in reality, a claim of a *repeal by implication* of the Federal Trade Mark Act of 1905 as amended, and of the common law of the United States and of the several States and Territories, with relation to trade marks.

Hence the established rules of statutory construction with relation to repeals by implication are applicable here.

H. Repeals by implication are not favored.

(a) Passing by the vexed questions which petitioner discusses (*Brief*, pp. 26-27, 31-33) as to how far this Treaty may be self-executing, and as to the status of a Treaty in relation to an Act of Congress,¹² and assuming for the purposes of this case that the Treaty may be considered on a par with an Act of Congress, then the question that is presented upon petitioner's claim that the Treaty operates *pro tanto* as a repeal or modification of the Trade Mark Act of 1905, and of the common law, resolves itself simply into a

¹¹ Since the proclamation of the Treaty here in question this section of the United States Trade Mark Act has twice been reenacted by the Congress in substantially in the same form, only changing the initial word "An", as above quoted, to read "That an", and inserting two commas. [Act of June 20, 1936, c. 617, 49 Stat. 1539; 15 U. S. C., edition of 1939, Par. 84.] The later amendatory Act of June 10, 1938, amends this section only by deleting a *proviso* not material here. [Sec. 3, c. 332, 52 Stat. 638, 639.]

¹² But by no means admitting petitioner's contention. *Confer Cameron Septic Tank Co. vs. Knoxville*, 227 U. S. 39, 49-50.

claim of *repeal by implication*, since the Treaty contains no express words of repeal.

(b) But the general rule is that repeals by implication are not favored, and that the earlier statute and the later statute [here the Act of 1905, and the common law on the one hand; and this Treaty on the other hand] will stand together, and that there will be no repeal by implication, *unless they are necessarily in conflict*; in which case, of course, the earlier statute must give way to the later expression of the legislative will, *but only in so far as the necessary conflict between them extends, and no further.* *Posadas vs. National City Bank*, 296 U. S. 497, 503-505. For example, this court said in *Cope vs. Cope*, 137 U. S. 682, 686:

“Nothing is better settled than that repeals, and the same may be said of annulments, by implication, are not favored by the courts, and that no statute will be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction.”

It is believed that the rule is too well settled to require further citation of authorities.

I. Applying this rule to the present case, it is plain that there is no repeal by implication by this Treaty of the Federal Trade Mark Act of 1905, or the common law. There is nothing on the face of the Treaty indicating any such intent. To the exact contrary, Article 1 of the Treaty expressly provides, as above quoted (*ante*, p. 47) that the nationals of each of the Contracting States shall have

“the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source”;

and the intention to grant,—*and to grant nothing further,*—to the nationals of the other signatory powers “*the same*

rights and remedies", and none others, and nothing greater than is awarded to each signatory country's own nationals under its own local laws, is emphasized by the provision in the accompanying "Final Act", in the definition in its "Glossary", of "OWNERSHIP" within the intendment of the Treaty, as above quote (*ante*, p. 50), "as applied to trade marks", as meaning

"the right acquired by registration in countries where the right to a trade mark is so acquired and *the right acquired by adoption and use in countries where the right to a trade mark is so acquired.*" (*Italics supplied*)

J. The last clause of this definition, which we have placed in italics in the last quotation, was manifestly intended expressly to negative any intent in the Treaty to enlarge the meaning of "ownership" of a trade mark as the result of registration in countries where, as in the United States, registration does not carry with it a substantive right to the use of the mark, but where, as petitioner expressly admits (*Brief*, p. 28; *ante*, p. 44), "registration does not create the right to use the trade mark".

K. *There is nothing to the contrary of this in Article 11 of the Treaty*, upon which petitioner dwells (*Brief*, pp. 28-29; *ante*, p. 45). The mere use of the expression in that article in relation to the separate transfers of marks for separate countries that, "The use and exploitation of trade marks may be transferred separately for each country", cannot be said, in the face of the general intent manifested by other provisions of the Treaty, and in the face of the established rule against repeals by implication, to have been intended to operate, by the mere insertion of the words "and exploitation" in this phrase, to override the express provisions above quoted in Article 1 of the Treaty and in the definition of "Ownership" in the accompanying "Glossary" in the "Final Act"; or, in relation to the pres-

ent case, to override the Act of the Congress of the United States and our common law in relation to trade marks.¹³

L. Petitioner's contention, if admitted, would, instead of simplifying the law, result in interminable confusion. Instead of the rights of the registrant of a trade mark in the United States being determined by the Act of Congress and our settled common law, and the laws of the several States and Territories in regard to its use, his rights would, on the contrary, be determined by the varying laws of all the different countries signatory to the Treaty, depending on the law of that particular country in which it might appear that the first registration of the particular mark was claimed to have been made. For example, if the first registration were in Brazil, then we should have to look up the laws of Brazil in force at the time of that registration and apply them in determining the rights in this country of the registrant, under the Treaty. Or if the first registration were claimed to have been in Paraguay, then we should have to look up the laws of Paraguay in force at the time of the registration, and apply them here. And so likewise, if it were in Uruguay, or in the Dominican

¹³ And the language contained in the concluding sentence of the first paragraph of Article 11, and carefully repeated again in exactly the same wording in the concluding sentence of the second paragraph [the particular paragraph containing the words "and exploitation" upon which petitioner here relies] that:

"Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective" (*Italics supplied*),

is at least as significant of an intention, in accordance with the general spirit of the Treaty, *not to override the local laws*, as is any contrary inference which might otherwise be drawn from the mere use of the words "and exploitation", if they were to be considered as standing wholly alone, and dissociated from their context.

Republic, or in Chile, or in Guatemala, or in Haiti, or [as here] in Cuba, then we should have always to look up the laws of the particular country, as they stood when the first registration was made there, and to apply them here in the United States as the law determining the rights of the particular registrant, imported with his registration into this country for that particular case.

It would be confusion worse confounded. No such result was ever intended by this Treaty. The Senate never had any such thought in mind in ratifying it.

M. In any event, the "Silver Label" ("Carta de Plata") which petitioner now desires to use in Puerto Rico, does not appear ever to have been registered at all in Cuba; and, therefore, does not appear to be entitled to the benefit of the Treaty in any case.

Point X

The acts here assailed do not violate the due process clause of the Fifth Amendment, nor the provisions of the first clause of Section 2 of the Organic Act guaranteeing due process and equal protection of the laws.

It necessarily follows from what has heretofore been said that the only remaining ground upon which petitioner can seek to sustain the decree of the District Court, and to override the unanimous judgment of the Circuit Court of Appeals, is its contention that the insular statutes here assailed violate the provision of the Fifth Amendment,

"nor shall any person * * * be deprived of life, liberty, or property, without due process of law,"

or that of the first clause of Section 2 of the Organic Act for Puerto Rico (c. 145, 39 Stat. 951, substantially an embodiment of the "due process" clause of the Fifth Amendment):

"Sec. 2. That no law shall be enacted in Porto Rico

which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

This is the substantial question in this case. The District Court resolved it against the validity of the statutes (*Opinion*, May 9, 1938; R. 95, 96-99); but the Circuit Court of Appeals unanimously reversed, and upheld the validity of the insular legislation. [*Confer, ante*, pp. 3, 6-10, and the quotation there (at pp. 7-10) from the opinion of the Circuit Court of Appeals, which is believed manifestly correct].

Point XI

In approaching this question several basic considerations are to be kept in mind.

A. As above pointed out (*ante*, Points I, II, III, pp. 26-30), and as was held by the Court of Appeals [R. 440-441, *supra*], the Legislature of Puerto Rico in enacting these statutes was *exercising its legislative local police power* for the welfare of the community and for the protection and encouragement of its local industries. In the exercise of that power it was clothed with all of the powers of a State legislature, and with all of the powers which the Congress could itself exercise in such local legislation,—substantially all of the broad powers of the English Parliament in this respect.

B. It was exercising these powers *with respect to the manufacture and traffic in intoxicating liquors*, a subject universally conceded to be peculiarly within the scope of the police powers of the local legislature. [*Confer, Zifrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 138-139].

C. It was,—as appears not only from the substance of both Act No. 6 of June 30, 1936, and Act No. 149 of May 15, 1937, but as well also from the substance of the first act of the series, Act No. 115 of May 15, 1936, and also, expressly, from the "declaration of policy" put into Section

1 by Act No. 149 of May 15, 1937,—intending to exercise its police powers to protect the welfare of the community and to protect and develop its local industries by enacting legislation [*“Declaration of Policy”*, Sec. 1(b), Act No. 149, Laws of 1937, pp. 392, 393; Appendix to Suggestions in Opposition, pp. 64-65],

- [1] “to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital”,
- [2] “so as to avoid the increase and growth of financial absenteeism”,
- [3] “and to favor said domestic industry”,
- [4] “so that it may receive adequate protection against any unfair competition”,
- [5] “in the Puerto Rican market”,
- [6] “in the continental American market”,
- [7] “and in any other possible purchasing market”.

D. This legislative purpose was certainly, as the Circuit Court of Appeals says [R. 440; 109 F. (2d) 57, 65] a “legitimate” purpose.

E. This legislative purpose to protect the local “renascent liquor industry” from “competition by foreign capital”, and to “avoid the increase and growth of financial absenteeism”, is quite in line with recent developments of legislative policy in a number of the States of the Union, particularly in relation to the manufacture and transportation and sale of intoxicating liquors.

For example, there are statutes of CALIFORNIA discriminating against beer produced anywhere outside of that State [so-called “foreign beer”, although perhaps produced in some other State of the Union]; MINNESOTA, discriminating against any liquors produced outside of that State [by forbidding bringing any such liquors into the State containing more than 25% of alcohol “ready for sale without further processing”, unless bearing brands registered in the United States Patent Office]; PENNSYLVANIA,

discriminating against [a] beer produced outside of the borders of the State, as well as [b] sales by corporations having non-resident stockholders and officers [by means of license fees discriminating against distributors of beer produced outside of the State, and by forbidding sales of beer without a license, and forbidding a license to any corporation "unless all its officers and directors, and fifty-one percent of its stockholders have been residents of the State for the period of at least two years"]]; KENTUCKY, rigidly regulating the manufacture, sale, transportation, and possession of intoxicating liquors.

Cases involving the validity of the statutes of these four States, respectively, have recently come before this Court, and the statutes have been sustained. *State Board vs Young's Market Co.*, 299 U. S. 59; *Mahoney vs. Triner Corp.*, 304 U. S. 401; *Premier-Pabst Co. vs. Grosscup*, 298 U. S. 226; *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 134, 138-139.

F. The mere fact of the existence of such a wide-spread sentiment and legislative policy among the States of the Union, along lines of thought quite analogous to the policy of the Legislature of Puerto Rico in enacting these statutes, to protect and encourage the growth of local manufacturing liquor industries, and to permit them to recover from the enforced stagnation of the National prohibition period,—"*the renascent liquor industry of Puerto Rico*",—as well as to protect them from foreign competition, is in itself evidence of the reasonableness of such a policy, and affords strong grounds for a presumption of the constitutionality of the statutes here assailed.

This Court, speaking by CHIEF JUSTICE HUGHES, in *West Coast Hotel Co. vs. Parrish*, 300 U. S. 379, 399, has recently said:

"The adoption of similar requirements by many States evidences a deep-seated conviction both as to

the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious, and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment." (*Emphasis supplied.*)

G. Similarly, as the Court of Appeals noted [R. 440; *ante*, p. 8], the persistence of this policy through three successive sessions of the Legislature of Puerto Rico,—the regular session of 1936, the special session of 1936, and the regular session of 1937,—and the adoption of legislation along these same lines at each one of those three successive sessions,—experimental in character in the first Act; likewise experimental in the second Act, but to remain in effect for a longer period of time; and then, finally, making the legislation permanent in the third Act,—is in itself entitled to consideration as indicative, in the words of the Chief Justice, of "*a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it*,"—a deep-seated persistent conviction throughout the Island.

H. The right to enter into a business, or to carry it on, like the right to contract, is not an absolute or unqualified right; but is one of those forms of the "liberty" guaranteed by the due process clause which, like other forms of liberty, is, as was said in *West Coast Hotel Co. vs. Parrish, supra*, 300 U. S. 379, 391,

"necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

I. Particularly is this limitation to be remembered in the case of a foreign,—or alien,—corporation seeking to do

business within a State or Territory. Even with relation to a so-called "foreign corporation" which is "foreign" only in the sense that it is organized under the laws of some other State or Territory of the United States, the local legislature may wholly deny it the right to do business within the local jurisdiction. And where the right wholly to deny entry exists, the Legislature in permitting entry may couple the permit with limitations or conditions. [*Confer Baltimore & Ohio R. Co. vs. Lambert Run Coal Co.*, 267 Fed. 776, 781 (C.C.A.-IV; certiorari denied, 254 U. S. 651); *Ziffrin, Inc. vs. Reeves, supra*, 308 U. S. 132, 138-139].

And especially is this true, as above noted (*ante*, p. "B," p. 56) with reference to a foreign corporation engaging in the manufacture or sale of intoxicating liquors.

J. The foregoing principle is peculiarly applicable in the case of an **alien corporation** asking to do business within a State or Territory. Neither the "due process" clause nor the "equal protection" clause gives any right to an alien corporation to require a State or Territorial legislature to permit it to do business within the State or Territory, nor gives it any right to object to any conditions or limitations that the legislature may see fit to impose upon permitting it to come within the jurisdiction to do business.

Memorandum. This principle is directly applicable here. While, nominally, it is the Pennsylvania corporation, the Bacardi Corporation of America, which is registered to do business in Puerto Rico, yet in fact, the evidence and the findings of the District Court show that it is **really the alien corporation**, Compania Ron Bacardi, S. A. of Cuba, which is seeking to force its way in to do business in Puerto Rico, and is challenging the validity of the local statutes standing in its way. The District Court, upon the testimony of the plaintiff's wit-

ness, Mr. Jose M. Bosch, Vice-president (R. 133) of both the "Bacardi Corporation of America" and also of the Cuban Company, "Compania Ron Bacardi, S. A.", expressly found, (Opinion, R. 103-104):

"It seems to me that the right of the Cuban company, * * * would have a right to employ an agent in Continental United States to manufacture rum Bacardi for the account of the Cuban company, * * *. And stripped of all legal formalities that is what the contract here in question really is. The label is to be used only on rum manufactured in accordance with the formula owned by the company, and is to be produced under the personal supervision of an authorized agent of the Cuban company. The testimony further shows that the Cuban company has a substantial participation in the profits of the American company."¹⁰ (*Italics supplied.*)

K. *In relation to intoxicating liquors [at least], the Legislature even possesses the power to withdraw a license theretofore issued to a foreign corporation*, even though the foreign corporation has already invested money and built up a business under it. *Mahoney vs. Triner Corp.*, *supra*, 304 U. S. 401, 404. In that case this Court, speaking by MR. JUSTICE BRANDEIS, in dealing with the Minnesota statute to which reference has already been made (*ante*, pp. 57-58), said at p. 404):

¹⁰ It is to be borne in mind that since, as heretofore pointed out (*ante*, Point V, pp. 31-37) the commerce clause of the Constitution is not applicable in Puerto Rico; and since the Trade-mark Convention with Cuba, in view of the basic law with relation to the nature of trade-marks, does not enable the alien corporation to project its trade-marks into a State or Territory in defiance of the local laws [*ante*, Point IX, pp. 43-55]; and in view of the fact that there is no limitation by the Organic Act or by any other act of Congress upon the

"Third. The fact that Joseph Triner Corporation had, when the statute was passed, a valid license and a stock of liquors in Minnesota imported under it, is immaterial. **Independently of the Twenty-first Amendment, the State had power to terminate the license.** *Mugler v. Kansas*, 123 U. S. 623; *Premier-Pabst Sales Co. vs. Grosscup*, 298 U. S. 226, 228." (*Emphasis supplied.*)

L. In enacting laws with relation to intoxicating liquors, as with other laws enacted in the exercise of the police power, **the Legislature is primarily the judge of the necessity of the enactment.** *West Coast Hotel Co. vs. Parrish, supra*, 300 U. S. 379, 398; *Nebbia vs. New York*, 291 U. S. 502, 537, 538.

Thus this Court said in the *West Coast Hotel Co.* case, *supra*, 300 U. S. 379, 397-398:

"In *Nebbia v. New York*, 291 U. S. 502 * * * we again declared * * *; that 'with the wisdom of the policy adopted, *with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal*'; that 'times without number we have said that *the legislature is primarily the judge of the necessity* of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.' " (*Italics supplied.*)

full freedom of the Legislature of Puerto Rico in this respect, it follows that *there is no requirement of federal Constitution or law upon which this alien Cuban corporation can rely to compel the Legislature of Puerto Rico to permit it to come into the Island and there to enter into the business of manufacturing liquor to be labeled with its foreign trademarks, as it has never done prior to the enactment of the local statutes here in question.* The Convention does not clothe it with any such power to override the local Territorial Legislature.

Confer, Puerto Rico vs. Rubert Hermanos, Inc., supra, 309 U. S. 543, 549: "How this policy was to be realized was for Puerto Rico to say."

M. The Legislature possesses wide powers of classification in relation to the objects and persons to be affected by its legislation. The "equal protection" clause of Section 2 of the Organic Act for Puerto Rico [substantially like the similar clause in the Fourteenth Amendment, which does not extend to Puerto Rico] does not substantially change or enlarge the effect of the "due process" clause of the Fifth Amendment [which is likewise embodied in Section 2 of the Organic Act]. Taken together, these clauses simply require that State [or Territorial] laws apply alike to all persons similarly situated. They do not prevent, or further limit, classification by the Legislature. *Currin vs. Wallace*, 306 U. S. 1, 14; *Borden's Farm Products Co. vs. Ten Eyck*, 297 U. S. 251, 261-264; *Nebbia vs. New York*, *supra*, 291 U. S. 502; *Borden's Farm Products Co. vs. Baldwin*, 293 U. S. 194, 210; *Barrett vs. State of Indiana*, 229 U. S. 26.

The divided Court decision in *Mayflower Farms, Inc., vs. Ten Eyck*, 297 U. S. 266, upon which petitioner relies (*Brief*, pp. 44-45) is not to the contrary. As MR. JUSTICE ROBERTS there pointed out (at pp. 272, 274):

"The record discloses no reason for the discrimination. The report of the committee * * * is silent on the subject. * * *, it affords no clue to the genesis of the clause * * *. (p. 272)

"* * * The appellees do not intimate that the classification bears any relation to the public health or welfare generally; * * *. In the absence of any such showing, we have no right to conjure up possible situations which might justify the discrimination." (at p. 274; *italics supplied*)

N. There is a strong presumption in favor of the validity of the legislative action. He who assails the constitutionality of a statute must be prepared to show that it is *clearly* unconstitutional. The burden is upon him "to make a convincing showing". *Townsend vs. Yeomans*, 301 U. S. 441, 451.

As the Court of Appeals said [R. 441; *ante*, p. 8]:

"*** * doubt is not enough, that unconstitutionality must clearly appear in order to warrant us in holding legislation void." (*Italics supplied.*)

The rule has been re-stated innumerable times. *Confer*, e.g., *Green vs. Frazier*, 253 U. S. 253.

O. The broad and varied powers of the Legislature in the classification and regulation of industry, even where not so clearly affected with a public interest as is the manufacture and dealing in intoxicating liquors, are illustrated in a wide range of cases. Examples are:

Florida—Miami Laundry Co. vs. Florida Dry Cleaning & Laundry Board, 134 Fla. 1, 8-13; 183 Sou. 759. Fixing minimum prices for laundry and dry cleaning.

Florida—Mayo, Commissioner vs. The Polk Co., 124 Fla. 534 (169 Sou. 41); appeal dismissed for want of a substantial federal question, 293 U. S. 507, 508. "Bond and License Law" of 1935 requiring licenses for citrus fruit dealers and canners.

New York—United States vs. Rock Royal Co-op., Inc., 307 U. S. 533, 562 *et seq.* Act and order of Secretary of Agriculture sustained, although specifically exempting co-operatives, and applicable to independent canners only.

Georgia—Townsend vs. Yeomans, 301 U. S. 441. Maximum charges for handling and selling leaf tobacco.

Illinois—Munn vs. Illinois, 94 U. S. 113. Regulating prices to be charged by grain elevators.

New York—Nebbia vs. People of New York, supra, 291 U. S. 502. Regulating milk prices.

New York—Hageman Farms Corp. vs. Baldwin, 293 U. S. 163. Milk prices.

North Dakota—Brass vs. State of North Dakota, 153 U. S. 391. Maximum charges for storage.

Pennsylvania—Milk Control Board of Pennsylvania vs. Eisenberg Farm Products, supra, 306 U. S. 346. Milk prices.

Washington [State]. West Coast Hotel Co. vs. Parrish, supra, 300 U. S. 379. Minimum wages for women.

Point XII

It is in the light of the foregoing principles that the general rule is to be approached.

A. The general rule is, as it was stated in the *West Coast Hotel Co.* case, *supra*, 300 U. S. 379, 391, that:

"regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process".

B. In determining whether the remedy chosen by the Legislature in the exercise of its broad discretionary powers so far exceeds that which may be allowed to be "reasonable" in relation to its subject, or is so widely astray from any apparent public purpose that it cannot be said to be "adopted in the interests of the community", all of the foregoing principles must be borne in mind. As was said by MR. JUSTICE ROBERTS speaking for the court in *Borden's Farm Products Co. vs. Ten Eyck, supra*, 297 U. S. 251, 263:

"Judicial inquiry does not concern itself with the

accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary. *Standard Oil Co. v. Marysville*, 279 U. S. 582, 586-587".

And, as this Court has likewise said:

"The court does not sit as a board of revision to substitute its judgment for that of the Legislature". (*St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 51).

Point XIII

Considered in the light of the foregoing established principles, the acts of the Legislature of Puerto Rico here assailed do not violate the "due process" or the "equal protection" clause. They are valid enactments of the local legislative power.

WHEREIN DO THEY OFFEND?

A. The District Court says (Opinion, R. 96):

"when the police power is invoked two things must appear. First, an evil; second, a remedy calculated to correct the evil."

He then, "applying this principle to the instant case" quotes the "declaration of policy" in Section 1(b) of Act No. 149 of May 15, 1937, and says (R. 97): "Here we have the evil". He then asks "What is the remedy provided by the act?"; and, after quoting Section 44 (*ante*, p. 18), continues (R. 97), without further analysis:

"Does the remedy provided correct the evil complained of? It is difficult to see how anyone can urge that it does."

This is all that he says upon the question. That is his decision. The following pages of the opinion are devoted to distinguishing cases (R. 97-102) relied upon by the defendant and the intervenor, and to discussion of the interstate commerce clause (R. 102-105), which he erroneously considers applicable here, and applies, and which he holds the *proviso* to Section 44(b) of the Act (Laws of 1937, at

p. 394; Appendix to Suggestions in Opposition, p. 66) forbidding shipment of distilled spirits [except industrial alcohol, etc.] out of Puerto Rico in containers holding more than a gallon, violates, and therefore to be invalid, *wholly overlooking* the established rule (*ante*, Point V, pp. 31-37) that THE INTERSTATE COMMERCE CLAUSE IS NOT APPLICABLE TO PUERTO RICO AT ALL.

The Circuit Court of Appeals correctly overruled the District Court in this; correctly upheld the validity of the legislation [R. 438-443, *supra*; *ante*, pp. 7-10].

B. The District Court set up his own individual opinion in opposition to that of the elected representatives of the people in the Legislature upon these questions of fact and of policy. He says (R. 97, *supra*), as above quoted: "Does the remedy provided correct the evil complained of?". And he answers his own question by saying: "It is difficult to see how anyone can urge that it does."

But the members of the Legislature, presumably familiar with local business and social conditions in the Island, have found that it does; and have enacted it into law. The District Court admits that the protection and encouragement of local industries, and discrimination in their favor as against foreign corporations, and particularly as against alien corporations and alien business, and the discouragement or prevention of "financial absenteeism" and, particularly, the protection of "the renascent liquor industry of Puerto Rico" in building it up, after the enforced stagnation by the National prohibition era, are legitimate legislative purposes. But the District Court thinks that the particular remedy adopted by the Legislature in these statutes is not well adapted to those purposes.

C. However, as the Circuit Court of Appeals pointed out (R. 440, *supra*; *ante*, p. 8), the members of the Legislature, persistently, through three successive legislative ses-

sions have adhered to the opinion that it is; and after twice adopting it experimentally in the two earlier Acts of the series have finally enacted it into permanent legislation by the third Act (Act No. 149 of May 15, 1937), here before us. And it may be suggested that, as a practical matter, and as an effective,—as perhaps the most effective,—practical means of checking "financial absenteeism" in relation to this particular matter of the manufacture of distilled spirits, and especially of rum, in Puerto Rico, and of protecting the Island's "renascent liquor industry" from the devastating competition, while it is being built up, of alien businesses backed by vast aggregations of capital, with world famous names and brands giving them many of the advantages of monopolistic control of the market, the really most effective way was to strike at the use of their alien names and brands in labeling distilled spirits, especially rum, produced in the Island.

Who shall say that the Legislature is not entitled to its opinion on this question; or that its opinion is so merely foolish and unreasonable that it may be disregarded by the courts;—that is to say, that it is so "unreasonable" that "no reasonable man" can be imagined as believing in it.

D. "The proof of the pudding is in the eating". Perhaps the best proof of the effectiveness of the Legislature's remedy is this very lawsuit itself. Here is this great world famous Bacardi organization, with its world famous "Bacardi" brands, anxious to invade the rum manufacturing field in Puerto Rico, and to throw its world famous name into competition with the local Puerto Rican manufacturers; ready, as it itself says (*Bosch, testimony*, R. 138) to spend \$2,000,000 or more for that purpose,—[and saying that it costs at least \$2,000,000 properly to establish such a business in a new field, which shows what the local manufacturers are facing in endeavoring to build up their "renascent liquor business of Puerto Rico" which the Legis-

lature properly desires to protect],—now finding its designs checked by this very remedy adopted by the Legislature. Hence, it brings this lawsuit; and says that, unless it can have its injunction, it will be “irreparably injured”; that it cannot go ahead in Puerto Rico.

Is not the Legislature's remedy proven effective? Has it not shown itself well adapted to cure the evils stated in the legislative “declaration of policy”?

E. It may also be suggested that there now appears to be another evil attendant upon “financial absenteeism” with respect to this particular industry, the existence of which is developed by the plaintiff's own evidence in this case. Plainly the purpose of this Cuban Bacardi organization in seeking to invade the rum manufacturing field in Puerto Rico is *to come within the United States tariff wall*, so as to be able to manufacture their rum in Puerto Rico and to bring it into the continental United States duty free,—and thereby to save paying the federal Treasury some \$4.50 per case in United States tariff duties. But when they undertake to do that, in the manner they do, the Legislature may well have believed that they manifestly *injure the business reputation and the trade of Puerto Rico, generally, in a very serious way*. This goes beyond injury to the Puerto Rican liquor manufacturers, and affects the entire industry of the Island, in the development of which the insular government is necessarily very gravely concerned.

This Bacardi organization possesses and has used for many years, as the evidence in this case shows, brands and labels for rum “*Carta de Oro*” and “*Carta Blanca*”,—it “gold label” and its “white label” (“lined in gold”) labels, both world famous [Plaintiff's Exhibits “G” and “H” (“*Carta de Oro*”), and “E” (“*Carta Blanca*”); R. 2 Σ , 129, 233-234, 243; 28, 129, 210, 211]. It now proposes to use upon its rum produced in Puerto Rico, not these famous Bacardi gold and white [gold]

labels, but on the contrary, a new label which it has adopted and which it calls its "Carta de Plata" ["silver label"] with a different (yellowish) color, and a *silver* triangle in the lower left-hand corner (enclosing the Bacardi "bat" trade mark) (Plaintiff's Exhibits "N-1" and "N-2"; R. 274, 276), instead of the well-known gold triangle in the lower left-hand corner of the famous "Carta de Oro" Bacardi labels.

The silver label immediately connotes something inferior to the gold. It might very easily do that, to the mind of the ordinary purchaser, despite the fact that the rum manufactured by this organization in Puerto Rico may be, as they say it is (Bosch, test.; R. 144-145), made by exactly the same process as the rum they make in Cuba, and under the same supervision, and is just as good in every respect.

Nevertheless the casual purchaser of rum in the continental United States, seeing this Bacardi "silver label" on the bottle offered him at a cheaper price [because of savings in customs duties] than the "gold label" with the gold triangle on it, and than the "white label", might very easily, in nine cases out of ten, think either one of two things: Either (1) that even though marked "Puerto Rican Rum" yet this is rum of the well-known Cuban company, the Bacardi organization, and must be good because it is made by Bacardi, and buys it because of the *Cuban* Bacardi name which he associates with Cuba, and hence with good quality; or else, perhaps more probably, (2) seeing the silver label, the words "*Carta de Plata*", and that it is marked "Puerto Rican Rum", he will conclude that it is Bacardi's *second quality* rum and, think that the cheaper price denotes inferior quality, and will come to associate inferior quality with Puerto Rican rum in his mind,—and will almost certainly come unconsciously to associate that idea of inferior quality with his thought of all brands of Puerto Rican rum.

The resulting injury, not only to other Puerto Rican producers, but also to Puerto Rican industry generally, is plain. Who shall say that the Legislature of Puerto Rico is without power to prevent it?

F. *The reputation of Puerto Rico as a place from which first quality,—and not second quality,—products come is vital to the Island, to its people, and to all its industries.* This court will take a judicial notice of the acts of the Legislature to encourage the sale of Puerto Rican coffee in the mainland United States [“Cafe Rico”, “the Coffee of Royalty”], and for the encouragement of what is called “Tourism” in the Island, to make the people of the mainland acquainted with the attractions and with the excellent quality of the products of the Island, and the appropriations of money from the insular Treasury for those purposes, and the campaign to those ends being conducted in the mainland. And of the distressing situation of the Island with reference to its great needlework industry in consequence of the effects of the Trade Agreement with Switzerland and of the “wages and hours” laws, and the consequent necessity of fostering the reputation of high quality for that product, since, with these handicaps, only the finest quality of Puerto Rican needlework and lingerie can be profitably marketed; and similarly as to the tobacco industry. And of the constant necessity to emphasize the high quality of Puerto Rican products, and always to endeavor to off-set what seems to be a nation-wide tendency unconsciously to depreciate them [perhaps just because they are domestic products, and not “imported” or “foreign,” as are those of Cuba],—the constant tendency, for example, to buy a high class hand-made Puerto Rican cigar readily if only it is labeled “Cuban”, and to buy highclass Puerto Rican lingerie if it is labeled “French”. And so, therefore, it is vital to the Island of Puerto Rico with its tremendously dense population accentuating all of its governmental problems, and vital to all of its industries, that the repu-

tation of one of its products, which it hopes to build up into a very great product,—its rum, shall not be slandered by marketing it in such a manner as to give the erroneous impression that Puerto Rican rum is a product of secondary quality.

The Legislature cannot be said to be without the power to protect Puerto Rican industry in this regard.

G. The District Court says (R. 102) "That whether so intended or not" "the Act has the appearance as being so framed as to exclude only the plaintiff." And that, "It is difficult to conceive of a more glaring discrimination". What the court plainly had in mind is that it does not appear that any other alien manufacturer whose trade-marks had not been used in Puerto Rico prior to February 1, 1936, appears as yet to have challenged the Act, or to have attempted to force its way into the liquor manufacturing field in Puerto Rico since the Acts in question were enacted. There may, or there may not be, other organizations similarly situated with the plaintiff, who would like to come in. Whether there be or not is immaterial. If there be only this one in the class, that does not give it a monopolistic right to defy the local laws. To the contrary, it may the better illustrate their value and necessity. Competition of just such world famous alien organizations, with the advantages of their famous names and the backing of great accumulated capital, would seem to be among the sort of things that the Legislature may properly consider "unfair" to the local Island industry. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico, or in the continental United States, prior to February 1, 1936, is not an unusual provision, nor in any way unfairly discriminative against foreign organizations that did not seek to come in before that time. On the contrary, it seems quite reasonable to protect those who had already come in while the local laws permitted it, had invested money and established themselves at that time.

H. As the Circuit Court of Appeals said (R. 442; *ante*, p. 9.

"We think the court's ruling that the statutes are invalid as constituting a denial of equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee" [petitioner] "was the only manufacturer affected by the particular statutory provision here considered. But they applied to all who might later engage in the business."

Point XIV

No question of actual deprivation of property is here involved.

On the contrary it appears (*ante*, Footnote 8, pp. 13-14, and *ante*, 4-5, 25-26) that this Bacardi organization did not come into the Island before they had full notice of the intention of the Legislature, in the spring of 1936, to enact laws along these lines; and did not in any way definitely obligate themselves, or invest any substantial amount of money, until after the enactment of the second act of the series, Act No. 6 of June 30, 1936. The only question possibly presented here is, therefore, not of any supposed actual deprivation of property, but only of a deprivation of a supposed "liberty" on the part of this alien organization to force its way into the field of manufacturing liquors in Puerto Rico, in defiance of the local law. It possesses no such absolute liberty.

Petitioner says (*Brief*, p. 40), confessedly entirely outside of the record, that it is "advised" "that the bill, as introduced did not contain the objectionable provisions"; and that "These were amendments adopted shortly before the passage of the bill". *But petitioner never made any such claim in either of the lower courts*, either in the District Court or in the Circuit Court of Appeals. The suggestion is not based upon anything in the record; and is directly in the face of the conclusive presumption that the Legislature did not disobey the requirement of the Organic Act in

paragraph 5 of Section 34, *supra*, that "No bill shall be so altered or amended on its passage through either House as to change its original purpose". It may be observed, however, that petitioner's statement as to being "advised" that these "were amendments adopted shortly before the passage of the bill" (*Italics supplied*) does not necessarily negative their having been originally introduced within the first forty days of the session, as required by paragraph 6 of Section 34 of the Organic Act, in connection with paragraph 5, *supra*,—that is to say, on or before March 21, 1936.

If petitioner had really had any substantial ground for an attack on the statute along this line, it may safely be concluded that it would have been presented to the District Court, and would appear somewhere in this record.

CONCLUSION

The statutes here assailed are valid. The judgment of the Circuit Court of Appeals, reversing the decree of the District Court, was right, and should be affirmed.

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APPENDIX

GENERAL INTER-AMERICAN CONVENTION FOR
TRADE MARK AND COMMERCIAL PROTECTION

(Op Stat., Part 2, pp. 2907 et seq.)

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Habana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan American Union at Washington,

APPENDIX

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks," signed at Buenos Aires on August 20, 1910, with view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indica-

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APPENDIX**GENERAL INTER-AMERICAN CONVENTION FOR
TRADE MARK AND COMMERCIAL PROTECTION**(46 Stat., Part 2, pp. 2907 *et seq.*)

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Habana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan American Union at Washington,

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks" signed at Buenos Aires on August 20, 1910, with a view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indica-

tions of geographical origin, and for this purpose have appointed as their respective delegates,
Peru:

Alfredo Gonzalez-Prada.

Bolivia:

Emeterio Cano de la Vega.

• • •

Cuba:

Gustavo Gutierrez.

Alfredo Bufill.

• • •

United States of America:

Francis White.

Thomas E. Robertson.

Edward S. Rogers.

CHAPTER I.

EQUALITY OF CITIZENS AND ALIENS AS TO TRADEMARK AND COMMERCIAL PROTECTION

Article 1.

The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source.

CHAPTER II.

TRADE MARK PROTECTION

Article 2.

The person who desires to obtain protection for his

marks in a country other than his own, in which this Convention is in force, can obtain protection either by applying directly to the proper office of the State in which he desires to obtain protection, or through the Inter-American Trade Mark Bureau referred to in the Protocol on the Inter-American Registration of Trade Marks, if this Protocol has been accepted by his country and the country in which he seeks protection.

Article 3.

Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

Registration or deposit may be refused or cancelled of marks:

1. The distinguishing elements of which infringe rights already acquired by another person in the country where registration or deposit is claimed.
2. Which lack any distinctive character or consist exclusively of words, symbols, or signs which serve in trade to designate the class, kind, quality, quantity, use, value, place of origin of the products, time of production, or which are or have become at the time registration or deposit is sought, generic or usual terms in current language or in the commercial usage of the country where registration or deposit is sought, when the owner of the marks seeks to appropriate them as a distinguishing element of his mark.

In determining the distinctive character of a mark, all the circumstances existing should be taken into account, particularly the duration of the use of the mark and if in fact it has acquired in the country where

deposit, registration or protection is sought, a significance distinctive of the applicant's goods.

3. Which offend public morals or which may be contrary to public order.

4. Which tend to expose persons, institutions, beliefs, national symbols or those of associations of public interest, to ridicule or contempt.

5. Which contain representations of racial types or scenes typical or characteristic of any of the Contracting States, other than that of the origin of the mark.

6. Which have as a principal distinguishing element, phrases, names or slogans which constitute the trade name or an essential or characteristic part thereof, belonging to some person engaged in any of the other Contracting States in the manufacture, trade or production of articles or merchandise of the same class as that to which the mark is applied.

Article 4.

The Contracting States agree to refuse to register or to cancel the registration and to prohibit the use, without authorization by competent authority, of marks which include national and state flags and coats-of-arms, national or state seals, designs on public coins and postage stamps, official labels, certificates or guarantees, or any national or state official insignia or simulations of any of the foregoing.

Article 5.

Labels, industrial designs, slogans, prints, catalogues or advertisements used to identify or to advertise goods, shall receive the same protection accorded to trade marks in countries where they are considered as such, upon complying with the requirements of the domestic trade mark law.

Article 6.

The Contracting States agree to admit to registration or deposit and to protect collective marks and marks of associations, the existence of which is not contrary to the laws of the country of origin, even when such associations do not own a manufacturing, industrial, commercial or agricultural establishment.

Each country shall determine the particular conditions under which such marks may be protected.

States, Provinces or Municipalities, in their character of corporations, may own, use, register or deposit marks and shall in that sense enjoy the benefits of this Convention.

Article 7.

Any owner of a mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

Article 8.

When the owner of a mark seeks the registration

or deposit of the mark in a Contracting State other than that of origin of the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and those of either Paragraph (b) or (c) below:

(a) That he enjoyed legal protection for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; and

(b) that the claimant of the interfering mark, the cancellation of which is sought, had knowledge of the use, employment, registration or deposit in any of the Contracting States of the mark for the specific goods to which said interfering mark is applied, prior to adoption and use thereof or prior to the filing of the application or deposit of the mark which is sought to be cancelled; or

(c) that the owner of the mark who seeks cancellation based on a prior right to the ownership and use of such mark, has traded or trades with or in the country in which cancellation is sought, and that goods designated by his mark have circulated and circulate in said country from a date prior to the filing of the application for registration or deposit for the mark, the cancellation which is claimed, or prior to the adoption and use of the same.

Article 9.

When the refusal of registration or deposit of a mark is based on a registration previously effected in accordance with the Convention, the owner of the refused mark shall have the right to request and obtain the cancellation of the mark previously registered or deposited;

by proving, in accordance with the legal procedure of the country in which he is endeavoring to obtain registration or deposit of his mark, that the registrant of the mark which he desires to cancel, has abandoned it. The period within which a mark may be declared abandoned for lack of use shall be determined by the internal law of each country, and if there is no provision in the internal law, the period shall be two years and one day beginning from the date of registration or deposit if the mark has never been used, or one year and one day if the abandonment or lack of use took place after the mark has been used.

Article 10.

The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

Article 11.

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

Article 12.

Any registration or deposit which has been effected in one of the Contracting States, or any pending application for registration or deposit, made by an agent, representative or customer of the owner of a mark in which a right has been acquired in another Contracting State through its registration, prior application or use, shall give to the original owner the right to demand its cancellation or refusal in accordance with the provisions of this Convention and to request and obtain the protection for himself, it being considered that such protection shall revert to the date of the application of the mark so denied or cancelled.

Article 13.

The use of a trade mark by its owner in a form different in minor or non-substantial elements from the form in which the mark has been registered in any of the Contracting States, shall not entail forfeiture of the registration or impair the protection of the mark.

In case the form or distinctive elements of the mark are substantially changed, or the list of goods to which it is to be applied is modified or increased, the proprietor of the mark may be required to apply for a new registration, without prejudice to the protection of the original mark or in respect to the original list of goods.

The requirements of the laws of the Contracting States with respect to the legend which indicates the authority

for the use of trade marks, shall be deemed fulfilled in respect to goods of foreign origin if such marks carry the words or indications legally used or required to be used in the country of origin of the goods.

CHAPTER III.

PROTECTION OF COMMERCIAL NAMES

Article 14.

Trade names or commercial names of persons entitled to the benefits of this Convention shall be protected in all the Contracting States. Such protection shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade mark.

Article 15.

The names of an individual, surnames and trade names used by manufacturers, industrialists, merchants or agriculturists to denote their trade or calling, as well as the firm's name, the name or title legally adopted and used by associations, corporations, companies or manufacturing, industrial, commercial or agricultural entities, in accordance with the provisions of the respective national laws, shall be understood to be commercial names.

Article 16.

The protection which this Convention affords to commercial names shall be:

(a) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

(b) to prohibit the use, registration or filing of a trade mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States,

engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade mark is intended.

Article 17.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States, may, in accordance with the law and the legal procedure of such countries, oppose the adoption, use, registration or deposit of a trade mark for products or merchandise of the same class as those sold under his commercial name, when he believes that such trade mark or the inclusion in it of the trade or commercial name or a simulation thereof may lead to error or confusion in the mind of the consumer with respect to such commercial name legally adopted and previously in use.

Article 18.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States may, in accordance with the law and procedure of the country where the proceeding is brought, apply for and obtain an injunction against the use of any commercial name or the cancellation of the registration or deposit of any trade mark, when such name or mark is intended for use in the manufacture, sale or production of articles or merchandise of the same class, by proving:

(a) that the commercial name or trade mark, the enjoining or cancellation of which is desired, is identical with or deceptively similar to his commercial name already legally adopted and previously used in any of the Contracting States, in the manufacture, sale or production of articles of the same class, and

(b) that prior to the adoption and use of the commercial name, or to the adoption and use or application for registration or deposit of the trade mark, the can-

cellation of which is sought, or the use of which is sought to be enjoined, he used and continues to use for the manufacture, sale or production of the same products or merchandise his commercial name adopted and previously used in any of the Contracting States or in the State in which cancellation or injunction is sought.

Article 19.

The protection of commercial names shall be given in accordance with the internal legislation and by the terms of this Convention, and in all cases where the internal legislation permits, by the competent governmental or administrative authorities whenever they have knowledge or reliable proof of their legal existence and use, or otherwise upon the motion of any interested party.

CHAPTER IV.

REPRESSION OF UNFAIR COMPETITION

Article 20.

Every act or deed contrary to commercial good faith or to the normal and honorable development of industrial or business activities shall be considered as unfair competition and, therefore, unjust and prohibited.

Article 21.

The following are declared to be acts of unfair competition and unless otherwise effectively dealt with under the domestic laws of the Contracting States shall be repressed under the provisions of this Convention:

(a) Acts calculated directly or indirectly to represent that the goods or business of a manufacturer, industrialist, merchant or agriculturist are the goods or business of another manufacturer, industrialist, merchant or agriculturist of any of the other Contracting States, whether such representation be made by the ap-

propriation or simulation of trade marks, symbols, distinctive names, the imitation of labels, wrappers, containers, commercial names, or other means of identification;

(b) The use of false descriptions of goods, by words, symbols or other means tending to deceive the public in the country where the acts occur, with respect to the nature, quality, or utility of the goods;

(c) The use of false indications of geographical origin or source of goods, by words, symbols, or other means which tend in that respect to deceive the public in the country in which these acts occur;

(d) To sell, or offer for sale to the public an article, product or merchandise of such form or appearance that even though it does not bear directly or indirectly an indication of origin or source, gives or produces, either by pictures, ornaments, or language employed in the text, the impression of being a product, article or commodity originating, manufactured or produced in one of the other Contracting States;

(e) Any other act or deed contrary to good faith in industrial, commercial or agricultural matters which, because of its nature or purpose, may be considered analogous or similar to those above mentioned.

Article 22.

The Contracting States which may not yet have enacted legislation repressing the acts of unfair competition mentioned in this chapter, shall apply to such acts the penalties contained in their legislation on trade marks or in any other statutes, and shall grant relief by way of injunction against the continuance of said acts at the request of any party injured; those causing such injury shall also be answerable in damages to the injured party.

CHAPTER V.

REPRESSION OF FALSE INDICATIONS OF GEOGRAPHICAL ORIGIN OR SOURCE

Article 23.

Every indication of geographical origin or source which does not actually correspond to the place in which the article, product or merchandise was fabricated, manufactured, produced or harvested, shall be considered fraudulent and illegal, and therefore prohibited.

Article 24.

For the purposes of this Convention the place of geographical origin or source shall be considered as indicated when the geographical name of a definite locality, region, country or nation, either expressly and directly, or indirectly, appears on any trade mark, label, cover, packing or wrapping, of any article, product or merchandise, directly or indirectly thereon, provided that said geographical name serves as a basis for or is the dominant element of the sentences, words or expressions used.

Article 25.

Geographical names indicating geographical origin or source are not susceptible of individual appropriation, and may be freely used to indicate the origin or source of the products or merchandise or his commercial domicile, by any manufacturer, industrialist, merchant or agriculturist established in the place indicated or dealing in the products there originating.

Article 26.

The indication of the place of geographical origin or source, affixed to or stamped upon the product or merchandise, must correspond exactly to the place in which the product or merchandise has been fabricated, manufactured or harvested.

Article 27.

Names, phrases or words, constituting in whole or in part geographical terms which through constant, general and reputable use in commerce have come to form the name or designation itself of the article, product or merchandise to which they are applied, are exempt from the provisions of the preceding articles; this exception, however, does not include regional indications of origin of industrial or agricultural products the quality and reputation of which to the consuming public depend on the place of production or origin.

Article 28.

In the absence of any special remedies insuring the repression of false indications of geographical origin or source, remedies provided by the domestic sanitary laws, laws dealing with misbranding and the laws relating to trade marks or trade names, shall be applicable in the Contracting States.

CHAPTER VI.**REMEDIES****Article 29.**

The manufacture, exploitation, importation, distribution, or sale is forbidden of articles or products which directly or indirectly infringe any of the provisions of this Convention with respect to trade mark protection; protection and safeguard of commercial names; repression of unfair competition; and repression of false indications of geographical origin or source.

Article 30.

Any act prohibited by this Convention will be repressed by the competent administrative or judicial authorities of the government of the state in which the offense was committed, by the legal methods and procedure existing

in said country, either by official action, or at the request of interested parties, who may avail themselves of the rights and remedies afforded by the laws to secure indemnification for the damage and loss suffered; the articles, products or merchandise or their marks, which are the instrumentality of the acts of unfair competition, shall be liable to seizure or destruction, or the offending markings obliterated, as the case may be.

Article 31.

Any manufacturer, industrialist, merchant or agriculturist, interested in the production, manufacture, or trade in the merchandise or articles affected by any prohibited act or deed, as well as his agents or representatives in any of the Contracting States and the consular officers of the state to which the locality or region falsely indicated as the place to which belongs the geographical origin or source, shall have sufficient legal authority to take and prosecute the necessary actions and proceedings before the administrative authorities and the courts of the Contracting States.

The same authority shall be enjoyed by official commissions or institutions and by syndicates or associations which represent the interests of industry, agriculture or commerce and which have been legally established for the defense of honest and fair trade methods.

CHAPTER VII.

GENERAL PROVISIONS

Article 32.

The administrative authorities and the courts shall have sole jurisdiction over administrative proceedings and administrative judgments, civil or criminal, arising in matters relating to the application of the national law.

Any differences which may arise with respect to the

interpretation or application of the principles of this Convention shall be settled by the courts of justice of each State, and only in case of the denial of justice shall they be submitted to arbitration.

Article 33.

Each of the Contracting States, in which it does not yet exist, hereby agrees to establish a protective service, for the suppression of unfair competition and false indication of geographical origin or source, and to publish for opposition in the official publication of the government, or in some other periodical, the trade marks solicited and granted as well as the administrative decisions made in the matter.

Article 34.

The present Convention shall be subject to periodic revision with the object of introducing therein such improvements as experience may indicate, taking advantage of any international conferences held by the American States, to which each country shall send a delegation in which it is recommended that there be included experts in the subject of trade marks, in order that effective results may be achieved.

The national administration of the country in which such conferences are held shall prepare, with the assistance of the Pan American Union and the Inter-American Trade Mark Bureau, the work of the respective conference.

The Director of the Inter-American Trade Mark Bureau may attend the sessions of such conferences and may take part in the discussions, but shall have no vote.

Article 35.

The provisions of this Convention shall have the force of law in those States in which international treaties

possess that character, as soon as they are ratified by their constitutional organs.

The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Convention, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

Article 36.

The Contracting States agree that, as soon as this Convention becomes effective, the Trade Mark Conventions of 1910 and 1923 shall automatically cease to have effect; but any rights which have been acquired, or which may be acquired thereunder, up to the time of the coming into effect of this Convention, shall continue to be valid until their due expiration.

Article 37.

The present Convention shall be ratified by the Contracting States in conformity with their respective constitutional procedures.

The original Convention and the instruments of ratification shall be deposited with the Pan American Union which shall transmit certified copies of the former and shall communicate notice of such ratifications to the other signatory Governments, and the Convention shall enter into effect for the Contracting States in the order that they deposit their ratifications.

This Convention shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance, at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other States. All denunciations shall be sent to the Pan American

Union which will thereupon transmit notice thereof to the other Contracting States.

The American States which have not subscribed to this Convention may adhere thereto by sending their respective official instrument to the Pan American Union which, in turn, will notify the governments of the remaining Contracting States in the manner previously indicated.

In witness whereof the above named delegates have signed this Convention in English, Spanish, Portuguese and French, and thereto have affixed their respective seals.

Done in the City of Washington, on the twentieth day of February in the year one thousand nine hundred and twenty-nine.

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OCT 15 1940

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 21.

BACARDI CORPORATION OF AMERICA,
Petitioner,

v.

MANUEL V. DOMENECH (formerly Rafael Sancho Bonet),
Treasurer of Puerto Rico,

Respondent,

and

DESTILERIA SERRALLES, INC.,
Intervenor-Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT OF
APPEALS, FIRST CIRCUIT.

**BRIEF FOR INTERVENOR-RESPONDENT,
DESTILERIA SERRALLES, INC.**

✓ DAVID A. BUCKLEY, JR.,
Attorney for Intervenor-Respondent.

Of Counsel:

H. RUSSELL BISHOP.

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BRIEF FOR INTERVENOR-RESPONDENT,
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Opinions of the Courts Below.

The opinion of the District Court is not officially reported. It is in the Transcript of the Record at pages 95-116. The opinion of the Circuit Court of Appeals (R. 429-443) is reported in 109 F. (2d) 57. This court granted certiorari on April 22, 1940, 309 U. S. 652 (R. 444).

Questions Presented.

The basic question is the validity of three Puerto Rican statutes which were designed to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor. The pertinent sections of Act No. 149, approved May 15, 1937, which was the final act, are Sections 3 and 4. Section 3 amended section 44 of Act No. 6 and, as it now reads, it prohibits the manufacture (by holders of the requisite permit) of alcoholic beverages on the containers or caps of the containers of which there appears,

“* * * any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico: *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936.”

By section 7 of Act No. 149, the Proviso of Section 44 of Act No. 6, as amended by Section 3 of Act 149 (quoted above), is, “in regard to trade marks only”, made applicable

“* * * to such trade marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.”

Act No. 149, Section 4, also provides that, with exceptions not here relevant, distilled spirits may be shipped or exported from Puerto Rico or imported into Puerto Rico "only in containers holding not more than one gallon."

The specific questions involved may be stated as follows:

1. Is the Bacardi Corporation of America, the petitioner, estopped to question the statute herein involved?
2. Is the statute in conflict with the Inter-American Convention for Trade-mark and Commercial Protection?
3. Does the statute conflict with the Federal Alcohol Administration Act?
4. Does the statute violate the commerce clause of the Constitution?
5. Does the statute deny petitioner the equal protection of the laws or deprive it of property without due process of law?

Decision of the District Court.

The District Court held the legislation invalid under the commerce clause of the Constitution and the due process and equal protection clauses. It overruled or disregarded the contentions of the petitioner as to the supposed violation of the Federal Alcohol Administration Act and of the Treaty.

Decision of the Circuit Court of Appeals.

The Circuit Court of Appeals reversed the decision of the District Court. It held the legislation valid. Its findings on the various issues involved were:

1. The statute is not invalid under the commerce clause of the Constitution of the United States because that clause does not extend to Puerto Rico.

2. The Federal Alcohol Administration Act does not deprive the legislature of Puerto Rico of the right to enact, in the exercise of its police power, the territorial statute restricting the use of labels. With respect to the limitation placed upon shipments in bulk, the Court said, "We cannot read into this statute (the Federal Alcohol Administration Act) an intent upon the part of Congress to bar the territorial statutes governing shipments in bulk" (R. 437).

3. Since Puerto Rico could constitutionally deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico, it could impose the conditions contained in the statute without violating the due process clause.

4. The Puerto Rican statute is not repugnant to the equal protection clause even though only one manufacturer was affected when the action challenging the statute was heard, because the provisions attacked applied to all who might later engage in the business.

5. The validity of a statute is not to depend upon a particular manufacturer's expectation that in the exercise of its police powers, a law-making body may not change its policies or its laws.

6. Since the provisions of the Acts here assailed are valid, it is not necessary to decide whether the plaintiff-appellee (now the petitioner) is estopped to question the validity of the challenged statutes.

Statutes.

Those portions of the Puerto Rican liquor statutes which are challenged by the petitioner are set forth in the Statement and are also set forth in Appendix A (*post*, pp. 65-72); Constitutional provisions are in Appendix B (*post*, p. 72); the pertinent sections of the Organic Act for Puerto

Rico in Appendix C (*post*, p. 73); excerpts from the Federal Alcohol Administration Act in Appendix D (*post*, pp. 74-80) and the General Inter-American Convention for Trade-mark and Commercial Protection in Appendix E (*post*, pp. 81, *et seq.*).

Statement.

This case involves the validity of certain sections of the Spirits and Alcoholic Beverages Act of Puerto Rico, as amended. Petitioner sued the Treasurer of Puerto Rico in the Federal District Court for Puerto Rico seeking a declaratory judgment and an injunction restraining that official from enforcing the assailed provisions of the statute. The District Court granted the injunction on the grounds that the statute was invalid (R. 95-116). The Circuit Court of Appeals for the First Circuit reversed this decision (109 F. (2d) 57; R. 429-443). This Court granted certiorari on April 22, 1940 (R. 444).

The Bacardi rum business, established in Cuba, was incorporated there as Compania Ron Bacardi, S. A. in 1919. That corporation has ever since conducted and still conducts the business of producing alcoholic liquors, principally rum, in Cuba which is sold under various trade names including the word "Bacardi," "Bacardi y Cia," trade-marks in which appear the representation of a bat in a circular frame, and certain distinctive labels (R. 2, Finding 6; R. 110).

Compania Ron Bacardi, S. A. (the Cuban Company), during the period 1933 to 1936 registered, among others, seven trade-marks in the United States Patent Office. Four of these seven trade-marks were registered in the office of

the Executive Secretary of Puerto Rico on April 10, 1935, as follows:

- No. 3916—Bacardi
- No. 3917—Bat Trade-mark
- No. 3918—Ron Bacardi Superior Carta de Oro
- No. 3919—Ron Bacardi Superior Carta Blanca

Bacardi rum, prior to prohibition was sold in large quantities in the United States and in Puerto Rico, and after the repeal of prohibition the sales were resumed and have continued in both places to the present time. All of the aforesaid sales were made under the above described trade names, and later, trade-marks (R. 2-4; finding 7; R. 110).

The petitioner, a Pennsylvania corporation, organized April 24, 1934, acquired on June 8, 1934 from Compania Ron Bacardi, S. A., the right to use its registered trademarks and also obtained disclosures of the secret processes and methods of producing Bacardi rum. Pursuant to such agreement, it brought to Puerto Rico in 1936 certain technicians who have instructed petitioner's employees in the use of said processes and methods, and who have supervised petitioner's manufacture of rum in Puerto Rico.

The petitioner at first did business in Pennsylvania, but on March 28, 1936, its basic permits to warehouse, rectify, and bottle alcoholic beverages in Pennsylvania which were still in effect, were amended by the Federal Alcohol Administration to enable the petitioner to operate in Puerto Rico (R. 4-5; Finding 15; R. 112). The labels used by the petitioner in Puerto Rico have been approved by the Federal Alcohol Administration.

On March 31, 1936, petitioner received from the Executive Secretary of Puerto Rico a certificate of registration

as a foreign corporation and received from the same official on April 6, 1936, a license to do business in Puerto Rico which license has been renewed from year to year (R. 5; Finding 10; R. 110, 111). It rented a building (with option of purchase) and moved certain equipment and materials from Pennsylvania and Cuba. Between April 6, 1936 and May 15, 1936, petitioner expended about \$45,000 (R. 6). This plant produced the rum "Ron Hatuey" which was sold locally in Puerto Rico. Petitioner also secured a permit to produce and sell the rum "Consumo Corriente", likewise sold locally.

On May 15, 1936, sixty-five days prior to the issuance of the permit to the petitioner, Law No. 115 was approved which stated in its title that it was enacted, " * * * to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits, and Alcoholic Beverages * * *."

Subsection C (1) of Section 41 of said Act provided that permits should be issued to persons who on February 1, 1936, possessed a license or permit. Section C (2) provided for the issuance of permits to others complying with the requirements therein set forth. Applicants were required to make the statement that they had no intention to violate clauses (h) and (i) which read as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name or trade-mark, the proper name of the manufacturer thereof, such name shall not in any manner or form whatever appear on the labels for any distilled spirits of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.

"(i) The production capacity of existing distilleries, manufacturing plants and rectifying and bot-

ting plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."

Clause (g) referred to in clause (i) reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; Provided, (1) That such limitation aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico" (R. 6-9).

Act No. 115 was repealed by Act No. 6 of the Third Special Session of the 13th Legislature. Act No. 6 was approved June 30, 1936, took effect on July 1, 1936, and was by its terms to expire on September 30, 1937.

Section 44 of Act No. 6 provided:

"Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; Provided, That this

limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and Provided, further, That distilled spirits with the exception of ethylic alcohol, 180° proof or more, industrial alcohol denatured according to an authorized formulae, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer."

Subsequent to the passage of Law No. 6, petitioner, on July 16, 1936 applied for a permit which by the above law was required in order to engage in the business of distilling rum in Puerto Rico. On July 20, 1936 the Treasurer of Puerto Rico granted the requested permit to the petitioner. It stated:

"This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the Law now in force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law of Regulations.

"This permit is personal and untransferable"
(R.288).

Act No. 149, passed during the 1937 Regular Session of the Puerto Rican Legislature, was approved on May 15, 1937, became effective on August 13, 1937, and was the last statute enacted providing for a comprehensive regulation

of the liquor industry in Puerto Rico. It consists mostly of amendments to Act No. 6.

Section 1 of Act No. 6 was amended by adding the following:

"It has been and is the intention and policy of this legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 40 of Act No. 6 was amended to provide explicitly the size of the letters which should be used on labels. The amendment is set forth in full in the appendix, *post*, page .

Section 44 of Act No. 6 was amended so that in its final form it reads as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufac-

turer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

A new section, 44(b) was added which reenacted the prohibition against the shipping of rum from Puerto Rico in containers holding more than one gallon, except in the case of rectifiers who wished to withdraw from the business and whose stock on hand did not exceed 30,000 gallons.

Section 44(b) is set out in full in the appendix (*post*, pp. 69-70).

A new section, 97(b) providing for appeals to the courts, was added. See appendix (*post*, p. 70).

Section 6 of Act 149 made Act No. 6, as amended, a permanent law.

Section 7 of Act No. 149 provided:

"In regard to trade-marks only, the provisions in the 'directing' part of Article 44 of Law No. 6, approved on June 30, 1936, shall be applicable as is hereby amended, to those trade-marks that have been used exclusively in continental United States by a distiller, rectifier, manufacturer, or packer of distilled spirits prior to February 1st, 1936, provided, that said trade-marks were not used in whole or in part by a distiller, rectifier, manufacturer or packer of distilled spirits outside of continental United States at any time prior to said date."

During the period that Act No. 6, which forbade the distillation of Puerto Rican rum under foreign labels or trade-marks, was in effect, it is stated in the complaint (R. 11) that:

"All stocks of the high grade rum accumulating, were in the process of maturing for marketing under the regular Bacardi rum label, trade-marks and brands which the plaintiff is authorized by the

Cuban Company to use and which are registered in the United States Patent Office, and in the office of the Executive Secretary of Puerto Rico.” (Italics supplied.)

During the period 1933 to 1937 Compania Ron Bacardi (the Cuban Corporation) sold in the United States more than 375,000 cases of rum under its registered trade-marks and spent more than \$300,000 in advertising rum bearing the said trade-marks. (Finding 8; R. 110). The petitioner has appropriated \$17,500 to be spent in advertising and promotion of the Puerto Rican Bacardi rum, but at the time of the hearing January 17, 1938, had spent only \$1,700 (Testimony of Bosch, R. 140). Beginning with November 1936 both the petitioner and the Cuban Corporation were selling rum under various Bacardi trade-marks in the United States (Testimony of Bosch, R. 145-146).

On July 31, 1937, plaintiff, appellee, filed its complaint praying that the defendant, Rafael Sancho Bonet, as Treasurer of Puerto Rico, be enjoined from enforcing Sections 2, 3, 4, 5, and 7 of Act 149 on the ground that each of said sections is contrary to and violates:

“1. The Fifth and Fourteenth Amendments to the Constitution of the United States and the Commerce Clause thereof, Article 1, Section 8, Clause 3.

“2. Sections 2 and 9 of the Organic Act of Puerto Rico approved March 2, 1917, Chapter 145, Laws of 1917.

“3. The ‘Federal Alcohol Administration Act,’ approved August 25, 1935, as amended.

“4. The Convention between the United States and Cuba. Treaty Series, 833, U. S. Statutes at Large, Vol. 46, page 2907, signed February 20, 1929, proclaimed by the President of the United States, February 27, 1931” (R. 21-22).

Further allegations of invalidity were:

"Section 44 of Act No. 6 is also void and of no effect because the subject matter of said section is not embraced in the title of said Act, as required by Section 34 of the Organic Act of Puerto Rico. That Sec. 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that Section is not mentioned in the title of the Act" (R. 22).

The intervenor-respondent filed an answer as intervenor (R. 77-92), which alleged that the statute was valid and which set up five special defenses (R. 92-22) as follows:

1. Because of its having accepted benefits under the Act, the petitioner is estopped to challenge it.
2. The challenged Acts are valid because enacted pursuant to the police power.
3. The challenged Acts are valid because they are necessary enactments for the control and regulation of the liquor traffic in Puerto Rico.
4. The petitioner is estopped by its laches to challenge the statutes.
5. The facts stated in the bill do not constitute an equitable action.

A preliminary injunction was issued on August 3, 1937 (R. 95), and a permanent injunction was entered on June 30, 1938 (R. 117), prohibiting enforcement of the statute.

Summary of Argument.

The petitioner, by applying for and accepting a permit under the Puerto Rican statutes is estopped from challenging the statutes. It could not, nor could any other distiller, obtain the permits without accepting the conditions which were attached to the granting of the permits. By

accepting the permits and operating under them petitioner accepted every advantage which the statutes could give and it may not refuse now to be bound by the conditions which it finds are onerous.

The statutes in question were enacted as an exercise of the police powers of Puerto Rico; they deal with a subject which is peculiarly a local matter; they operate equally upon all in the same class and therefore do not deny to any equal protection of the laws, nor do they deprive anyone of property without due process of law.

The Federal Alcohol Control Law is operative only where there is a state or territorial law permitting the manufacture of alcoholic beverages, and it is only after compliance with those laws that a distiller is in a position to receive the permits and licenses of the Federal Alcoholic Administration and be bound by the Act and regulations issued thereunder. It follows that state or territorial legislation is not in conflict with the Federal Alcoholic Administration Act merely because labelling and shipping provisions of the local legislation are different from the Federal Act.

The interstate commerce clause does not extend to Puerto Rico, but even if it did, the statutes in question are not void as a regulation thereof. Where the manufacture of an article may be wholly prohibited, there is no impairment of the commerce clause by statutes which regulate the method of shipment of such article.

The Puerto Rican statutes are not in conflict with the Inter-American Convention for Trade-mark and Commercial Protection. That Convention was entered into for the purpose of preventing piracy of trade-marks and trade names and the statutes in question in no way run counter to that purpose.

ARGUMENT.

POINT I.

Petitioner is estopped to question the validity of the challenged statute.

It is a well established principle of law that when a privilege which may be withheld is granted, one who accepts the privileges may not pick and choose from among the sections of the statute those which he will obey and those which he will challenge. *Frost v. Corporation Commission*, 278 U. S. 515, 527; *Buck v. Kuykendall*, 267 U. S. 307, 316; *St. Louis Company v. Prendergast Construction Company*, 260 U. S. 469, 472; *Hurley v. Commissioner of Fisheries*, 257 U. S. 223, 225. "By accepting the privilege it voluntarily consented to be bound by the conditions." *Pullman Co. v. Kansas*, 216 U. S. 56, 66.

If a statute requires that a license or a permit be obtained for the conduct of a business, the receipt of such a license or permit precludes a challenge of the Act under which the license or permit was obtained in a proceeding brought to enjoin the continued operation of the enterprise after a revocation of the permit. *Cooley on Constitutional Limitations* (8th Ed.) Vol. 1, page 369. This was well exemplified in the case of *American Bond & Mortgage Co. v. United States*, 52 F. (2d) 318 (C. C. A. 7; Cert. denied, 285 U. S. 538).

The American Bond & Mortgage Company had received from the Federal Radio Commission a license to operate a broadcasting station in Chicago. The permit was later revoked but the Bond & Mortgage Company continued to operate the broadcasting station. The United States brought proceedings to enjoin the continued operation and

the Bond & Mortgage Company defended on the ground that the Radio Act was unconstitutional.

In order to obtain the permit under which it had been broadcasting, the Bond & Mortgage Co. had been required to comply with Section 85 of the Radio Act of 1927, which is now Section 304 of the Communications Act of 1934, and which provided as follows:

"Sec. 85, *** No station license shall be granted by the commission *** until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or wave length or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise."

It was held that the Bond & Mortgage Company, in view of the provisions of the Act and in view of the fact that it had voluntarily made itself subject to the Act, could not assail those parts of the Act which it subsequently found burdensome.

This rule has been applied where a statute has been attacked as being repugnant to the due process and equal protection of the Fourteenth Amendment, and the commerce clause of the Constitution of the United States. *Grand Rapids & Indiana Ry. Co. v. Osborn*, 193 U. S. 17. In 1896 the Grand Rapids and Indiana Railroad Co. was sold at a foreclosure sale and purchased by one John C. Sims. Subsequently, Sims and his associates executed the certificate authorized by and complied with all the requirements in section 2 of Article 1 of Act 198 of the Session of 1873 of the Michigan Legislature. Under this section, the new corporation obtained the same rights and privileges as were possessed by the original company. In 1889, subdivision ninth of section 9 of Article II of the General Rail-

road Law of 1873—the section containing an enumeration of the powers conferred upon railroad corporations—had been amended to provide for the regulation of tolls and compensation to be paid for transportation and this was in force at the time the plaintiff in error was incorporated.

The case came to this court on a writ of error to review a judgment awarding a peremptory writ of mandamus commanding the plaintiff in error to reduce its rates for the transportation of passengers over its lines. The company claimed that the statute was repugnant to the due process and equal protection clauses of the Fourteenth Amendment, and also violated the commerce clause of the Constitution of the United States.

In affirming the decision of the State Court, Mr. Justice White, at page 29, stated:

“Having voluntarily accepted the privileges and benefits of the incorporation law of Michigan the company was bound by the provisions of existing laws regulating rates of fares upon railroads, and it is estopped from repudiating the burdens attached by the statute to the privilege of becoming an incorporated body.”

This decision was cited and followed in *Baltimore & Ohio Railroad Co. v. Lambert Run Coal Co.* 267 Fed. 776 (C. C. A. 4) (Cert. denied 254 U. S. 651), where again the right to challenge a statute by one who received benefits under it was passed upon. The Transportation Act of 1920 gave the plaintiff the right of equality in the distribution of coal cars of the defendant railroad company. The statute also provided that the Interstate Commerce Commission could, in its discretion, suspend the right to equality of distribution without a hearing. The Railroad Company, acting under an order of suspension from the Interstate

Commerce Commission, refused to grant equality and suit was brought by the Coal Company to enjoin the Railroad Company from distributing coal cars except on principles of strict equality. A motion was made to dismiss the bill by the Railroad Company, it having alleged in its answer its authority to deny equal distribution by reason of the Commission's order of suspension. The plaintiff had asserted that the statute, in giving the Interstate Commerce Commission the right to suspend without a hearing was unconstitutional. The Court said at page 781:

"Plaintiff's right to equality in the distribution of coal cars was conferred by statute. The Congress, in conferring the right, could place upon it any limitation or conditions it saw fit, including the limitation that the right may be suspended by the Interstate Commerce Commission in its discretion without a hearing. The plaintiff, claiming benefits of the statute, cannot assert the unconstitutionality of its limitations. *Daniels v. Tearney*, 102 U. S. 415; *Grand Rapids and Indiana Railroad Co. v. Osborne*, 193 U. S. 17. For these reasons the motion to dismiss the bill should have been granted."

The facts in the instant case bring the Bacardi Corporation of America, petitioner herein, squarely within the rule above discussed and therefore it had no standing in the District Court to challenge the validity of the laws under which it was operating. The distillation of intoxicating liquor is local business. *Premier-Pabst Co. v. Grosscup*, 298 U. S. 226; *Mugler v. Kansas*, 123 U. S. 623. It is well established that a State may exclude a foreign corporation from doing local business. *Bank of Augusta v. Earle*, 13 Pet. 519. There is no valid reason to deny this same right to Puerto Rico. The Bacardi Corporation of America, having accepted the privilege to engage in this

local business, must accept the conditions and is estopped to deny the constitutionality of the law.

The petitioner received its rectifier's permit on July 20, 1936, which was sixty-five days after Act 115 was approved, and twenty days after Act No. 6 had been approved which superseded Act No. 115 (R. 6). Without this permit, the petitioner had no right to distill or rectify rum, and it was only by complying with the requirements of Act No. 6 that the petitioner could obtain the permit. Section 44 of Act No. 6 provided:

"No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formally known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; PROVIDED, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico, prior to the approval of this Act; and Provided further, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer."

It is patent that the petitioner herein was in no different position than Bond & Mortgage Company. The Radio Act of 1927 under which the Bond & Mortgage Company received its license which was later revoked required that any license should waive

"Any right to any claim for any particular frequency or wave length or of the ether as against the regulatory power of the United States because of the previous use of the same."

The Puerto Rican statute served notice upon applicants for a distiller's or rectifier's permit that they could not use foreign labels and by accepting a permit with such notice, applicants waived any right to attack those provisions of the statute.

The petitioner knew when it applied for and received the permit that as the law then stood, it could not use the Bacardi labels because of the provisions just quoted. Moreover, the petitioner knew that the permit issued to it was subject to the laws and rules in force at the time of its issuance, or which might be enacted in the future, for aside from general principles of law by which it would be bound, these facts were plainly stated in the permit. This permit, issued on July 20, 1936, reads as follows:

"This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the law now in force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law or Regulations.

This permit is personal and untransferable" (R. 288).

The petitioner applied for and accepted this permit which conferred upon it the most valuable right which lay

within the power of the Insular Government to grant, so far as the distillation of rum was concerned. It is thus in the position of having obtained the greatest advantages and benefits which the Act can confer. Having benefited by the Act to that extent, however, the petitioner now says that it must not be bound by those parts of the Act which it finds onerous. Petitioner contends that the Act, by the limitations placed on manufacturing under certain labels and shipment in bulk, violates the due process and equal protection clauses of the Fourteenth and Fifth Amendments and the Commerce clause of the Constitution of the United States. When a similar position was taken by Pierce Oil Company in the case of *Pierce Oil Co. v. Phoenix Refining Co.*, 259 U. S. 125 (1922), the Court remarked at page 128:

“When the large discretion which the State had to impose terms upon this foreign corporation as a condition of permitting it to engage in wholly intra-state business is considered (citing cases), the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous.”

The so-called burdens of which the petitioner complains are no greater than those which must be borne by all the distillers and rectifiers of rum in Puerto Rico. None of them may defy the labelling provisions of the statute or the limitations placed on sales in bulk, and neither may petitioner. If, in requiring the petitioner to do or refrain from doing what *all* others must do, the law forbids the petitioner to do something which it thinks would be of great value to it, that does not result in imposing a greater bur-

den on petitioner than the others. It may result in causing the petitioner to change its plans of using the Bacardi labels on rum manufactured in Puerto Rico, but so would an act prohibiting the distillation of rum, and none would question that such an act would be valid.

The petitioner was not in the helpless condition of being forced to accept the permit the conditions attached or else go out of business because there was no proceeding open to petitioner whereby "it adequately could have avoided evils that made it practically impossible not to comply with the terms of the law." (*Union Pacific Railr id Company v. Public Service Commission*, 248 U. S. 67, 70.) Under the Federal Declaratory Judgment Act (Judicial Code, sec. 274 (d); U. S. C. 400) the petitioner could have obtained a binding ruling as to whether or not the provisions it now assails were valid. It could have done all this before it distilled or rectified one drop of rum. It preferred, however, to invest over \$500,000 after the law went into effect and to distill great quantities of rum under authority of the statutes it now attacks, taking its chances on having the law declared invalid. These operations have at all times been conducted by petitioner at a large profit, the average profit being \$5 per case or at the rate of 10,000 cases shipped per month, a profit of \$50,000 per month (R. 146). After having done all this, the petitioner then sought an injunction and a declaratory ruling. Having accepted the benefits, it may not now challenge the constitutionality of sections which it considers onerous. *Booth Fisheries Company v. Industrial Commission of Wisconsin*, 271 U. S. 208.

POINT II.

The provisions of Act No. 6 as amended by Act No. 149, which prohibit the use of certain trade marks and corporate names, do not offend against the due process clause of the Constitution of the United States nor of the Organic Act of Puerto Rico.

A. There is no taking of property.

The Puerto Rican law does not deny petitioner the right to do business in Puerto Rico nor to sell lawfully distilled rum under the Bacardi trade name; it does deny to the petitioner and to all others a permit to distill liquor if they intend to use internationally known trade names or trade-marks not used in Puerto Rico before February 1, 1936.

Denial of the right to do business under a particular trade-mark does not violate the due process clause. Petitioner may have a vested right to the Bacardi trade name, but it has no vested right to do business under it. A trade name in and of itself is not a property right.

"There is no such thing as property in a trade-mark except as a right appurtenant to an established business or trade in connection with which the mark is employed. The law of trade-marks is but a part of the broader law of unfair competition; the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the product of a particular trader and to protect his good will against the sale of another's product as his; and it is not the subject of property except in connection with an existing business."

United Drug Company v. Rectanus, 248 U. S. 90, 97.

The fact that petitioner is an assignee of the trade name "Bacardi" and has registered said trade name in Cuba and in the United States does not give to it the privilege of engaging in business wheresoever it wishes. It is a well established prerogative of a State or Country to deny to a foreign corporation the privilege of doing local business. It is not necessary to outlaw the type of business. *Bank of Augusta v. Earle*, 13 Pet. 519; *Washington ex rel. Bond & Goodwin & Tucker, Inc., v. Superior Court of Washington for Spokane County*, 289 U. S. 361. Even where a license has been granted it may be revoked. *Premier-Pabst Sales Co. v. Grosscup*, 298 U. S. 226.

The legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition. Since the conditions imposed by Act No. 6 as amended by Act No. 149 do not involve a taking of property, the due process clause is not violated.

B. The contested statute may be sustained as a valid exercise of the Police Power.

1. The police power and its free exercise in the legislative discretion is one of the attributes of the Legislature of Puerto Rico whose legislative powers extend to "all matters of a legislative character, not locally inapplicable" (Organic Act of Puerto Rico, Sec. 37); and except insofar as it is limited by the Organic Act, the Constitution of the United States or is subject to the power of Congress to enact overriding legislation, is as plenary as that of the States. *Puerto Rico v. The Shell Co.*, 302 U. S. 253.

The grant of "all local legislative power in Puerto Rico," to "extend to all matters of a legislative character not locally inapplicable," invested that Legislature with all the powers (except as specifically limited by the Act)

habitually understood to be granted to, and exercised by, the legislatures of other Territories; that is to say, under the controlling decisions of this court, with substantially all the local legislative powers habitually exercised by the Legislatures of the States. This court has said:

"It may be justly asserted that Puerto Rico is a completely organized territory, although not a territory incorporated into the United States, and that there is no reason why Puerto Rico should not be held to be such a territory." *Kopel v. Bingham*, 211 U. S. 468, 476 (Fuller, Ch. J.), quoted by Chief Justice White in the opinion of the court in *People of Puerto Rico v. Rosaly*, 227 U. S. 270, 274.

The Organic Act for Puerto Rico creates a completely organized territorial government, with legislative, executive, and judicial departments, modeled upon the distribution of powers in the federal government itself:

"A government conforming to the American system, with defined and divided powers, legislative, executive and judicial."

People of Puerto Rico v. Rosaly, supra, 227 U. S. 270, 277 (White, Ch. J.).

2. The police power comprehends legislation designed to promote the public welfare and general prosperity. The Fifth and Fourteenth Amendments do not prohibit legislative regulations for the public welfare, but merely require that the end shall be accomplished by methods consistent with due process. *Nebbia v. New York*, 291 U. S. 502; *West Coast Hotel v. Parrish*, 300 U. S. 379. In *Nebbia v. New York, supra*, at page 525, the Court said:

"The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action,

do not prohibit governmental regulations for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

Even the fact that police regulations may prevent the enjoyment of rights in property without providing compensation does not necessarily render them violative of the due process clause. *Chicago & Alton R. R. Co. v. Transbarger*, 238 U. S. 67; *Euclid v. Ambler Co.*, 272 U. S. 365. Regulation when it is a proper exercise of the police power is due process. *West Coast Hotel Co. v. Parrish*, 300 U. S. 379.

The police power is very broad and capable of meeting new conditions. *Barbier v. Connolly*, 113 U. S. 27; *Munn v. Illinois*, 94 U. S. 113; *Ziffrin v. Reeves*, 308 U. S. 132. It is not limited to legislation designed to promote the public health, safety or morals. In *Sligh v. Kirkwood*, 237 U. S. 52, legislation designed to protect the Florida citrus fruit industry was upheld. Florida passed a statute which made it a criminal offense to deliver for shipment in interstate commerce citrus fruits then and there immature and unfit for consumption. In sustaining this statute as a proper exercise of the police power of the State of Florida, the Court said, at page 61:

"We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida. It was competent for the legislature to find that it was essential for the success of that industry that its reputation be preserved in other States wherein such fruits find their most extensive market. The shipment of fruits, so immature as to be unfit for consumption, and consequently injurious to the health of the purchaser, would not be otherwise than a serious injury to the local trade, and would certainly affect the successful conduct of such business within the State. The protection of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent, and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose."

The police power is often used to promulgate and make provisions for the carrying out of a program designed to promote the general welfare. Thus, the power to regulate the manufacture and sale of goods and particularly of certain kinds of goods, the encouragement of the manufacture of which is believed by the Legislature to be in the public interest, is one of the police powers. It has been so recognized in innumerable cases raising the question of whether or not such regulations entail deprivation of property without due process. It includes the right to legislate for the purpose of protecting and fostering home industries, which is well illustrated by the enactment, and the upholding of the validity of the various acts which discriminate against oleomargarine for the purpose of protecting the local dairy industry. *Capital City Dairy Co. v. Ohio*, 183 U. S. 238; *Powell v. Pennsylvania*, 127 U. S. 678.

Legislation designed to benefit local insurance agents was upheld last term in *Osborn v. Ozlin*, 310 U. S. 53. An analogy may be drawn between the legislation passed on in that case and the Puerto Rican statute by which Puerto Rico endeavors to protect its distilleries financed with local capital from the competition of foreign trade names. Local insurance agents were losing business to wholesale insurance brokers who through the process of pooling risks, were able to obtain cheaper rates from the insurance companies, and reduced commissions to the customer. Since these brokers are for the most part established in the large commercial centers, the advantages which they offered drew the Virginia business of interstate enterprises away from local agents. To meet this situation, Virginia passed a statute which forbade the writing of contracts of insurance or of surety by companies authorized to do business within that commonwealth "except through regularly constituted and registered resident agents or agencies of such companies." Such resident agents "shall be entitled to and shall receive the usual and customary commission allowed on such contracts," and may not share more than half of this commission with a non-resident broker. Disobedience of these provisions might entail a fine or revocation of the corporate license in Virginia, or both.

The Puerto Rican legislature was similarly motivated. It desired to protect its liquor industry which, since the repeal of prohibition, had been revived by the expenditure of local capital—protect it from the competition of foreign trade names. The use of foreign names would in no way contribute to the development of the Puerto Rican industry by local interests. The only interest which foreign capital would have in locating in Puerto Rico would be to evade the payment of the tariff and at the same time capitalize

upon the notoriety of brands or trade-names. Any change in the tariff situation would result in the foreign industry leaving the island.

3. The prohibition against the use on containers of Puerto Rican rum of labels famous because of their long continued use on rum distilled in other countries, is a measure well adopted to protect the rum industry of Puerto Rico from unfair competition in the local and continental United States market and it is not arbitrary. There is nothing more drastic in this prohibition than in the statute considered in *Osborn v. Ozlin, supra*; also, Cf. *Premier-Pabst Brewing Co. v. Grosscup*, 298 U. S. 226. Statutes designed to encourage the home industry by burdening and thus discouraging the importation of liquors and beer from other states have been enacted by the legislatures of California, Minnesota, and Michigan and have been upheld by the Supreme Court. *State Board v. Young's Market Co.*, 299 U. S. 59; *Mahoney v. Triner Corp.*, 304 U. S. 401. It is merely the means adopted by the Puerto Rican Legislature which differs from the statutes of the above mentioned States. The design and intent are the same, and represent the exercise of the same legislative power.

The record discloses an abundance of facts upon which the legislature could base the policy which it adopted. These facts were a matter of common knowledge in the rum industry of Puerto Rico and were laid before the Legislature of Puerto Rico in the form of a Memorial (R. 39-60). It is fair to presume that the Legislature was familiar with these facts so presented.

The more salient of these facts may be summarized as follows:

Since the repeal of prohibition the local liquor industry of Puerto Rico has been revived. Owing to the long years of prohibition, no one of the new or revived companies enjoyed the reputation in the markets of the United States that was possessed by certain other established name brands of foreign countries. This advantage was equalized by the import duties imposed upon liquors imported from foreign countries. This tariff differential amounted to \$4.80 per case (R. 39). By underselling foreign brands, competition was possible, but a different situation was presented when foreign capital undertook to produce liquor in Puerto Rico under famous trade names so as to avoid payment of the import duty. It was to protect the rena-
cent liquor industry of Puerto Rico from such competition that the present law was passed.

The testimony in this case, given moreover by petitioner's own witnesses, shows conclusively that in legislating with regard to labels and trade names the Legislature acted with full knowledge and understanding of the problems presented and adopted a realistic approach to their solution. In view of the situation presented, the law cannot be called an arbitrary exercise of the police power.

**C. Aside from the question of constitutionality,
the courts are unauthorized to deal with the wisdom
of a policy adopted by the legislature.**

There is no rule of constitutional law more firmly established than that which holds that where the power exists to legislate, it is for the Legislature to decide whether the power shall be used and the method which shall be used to accomplish the desired result. It is beyond the judicial competence to evaluate legislation from the point of view of necessity, wisdom, or congruity.

"We need not labor the point, long settled, that where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of the courts, but for that of the legislative body on which rests the duty and responsibility of decision."

Standard Oil Co. v. Marysville, 279 U. S. 582, 584.

In one of the most authoritative cases on the subject, one which has been cited by this Court and by other courts time and time again, the Court, speaking through Mr. Justice Hughes, said:

"Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." (Italics supplied.)

Chicago, Burlington & Quincy Railroad Co. v. McGuire, 219 U. S. 549, 569.

The rule applies here. The Puerto Rican legislature, conceiving that the encouragement of the rum industry would be beneficial, enacted statutes to accomplish that end. The provision concerning the use of foreign trade-names and trade-marks is a part of that program. Whether it is the best means for the accomplishment of the purpose, or whether it will accomplish the purpose at all, is not for the courts to say. It is a determination which rests solely with the legislature.

POINT III.

The statutes do not deny petitioner the equal protection of the law.

Petitioner, in its brief (pp. 36-48) contends that the portion of the assailed statute which prohibits the use of the Bacardi labels, denies petitioner the equal protection of the laws. Petitioner bases its argument on the premise that the law was aimed at and affects petitioner only.

The Circuit Court of Appeals' decision on this point is clearly correct. The Court said (R. 442):

“We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels of brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time.”

This argument of the petitioner is based upon (1) a misunderstanding of the provisions and intent of the law, and (2) a misunderstanding of the scope of the law.

A. The section of the statute here considered is concerned with LABELS, not with manufacturers.

Petitioner's argument proceeds upon the theory that the legislation applies only to foreign manufacturers. This is wholly erroneous. The legislation forbids the use of foreign labels by any manufacturer.

Section 41(g) of Act 115 (the first Act), provided:

"No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured, in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

The next Act (No. 6) in section 44 provided:

"No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *provided*, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico, prior to the approval of this Act; and *Provided*, further, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing

the information prescribed by law and the regulations of the Treasurer.”

The last Act (No. 149) reads as follows:

“No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936.”

Each of these Acts has the same initial wording “No holder of a permit,” and then proceeds to forbid such holder to distill or bottle rum which shall carry the forbidden designations. There is here no discrimination against foreign manufacturers. It clearly applies to all manufacturers of rum in the Island. It applies directly to the intervenor-respondent and to every other domestic distiller. This is readily seen if it be assumed that the intervenor-respondent has entered into a contract with Fred L. Myers & Sons—makers of the famous “Planter’s Punch” Jamaica rum—similar to that existing between the petitioner and Compania Ron Bacardi S. A. Clearly the intervenor-respondent would be bound by this law just as petitioner is, yet it is not a foreign corporation.

The intent and effect of the law is simply this: All rum distilled in Puerto Rico must not be marketed under labels and trade-names which are celebrated because of their prior use on rums manufactured in countries other than Puerto Rico. It is *all* rums, not some, but *all* to which this applies and it makes no difference whether it is distilled by domestic or foreign corporations. The domicile of the corporation is of no significance; the deciding factor is whether or not it is a label, trade-mark or trade name coming within the definition of the statute. It would be hard to conceive of a requirement which came closer to absolute equality.

B. The Classification being based on the difference between well-known and lesser known trade-marks and names, is a reasonable classification.

The difference between trade-marks and names which are well-known and those which are not is a difference which this court has twice recognized as being so substantial as to uphold legislation based on such difference.

In *Borden v. Ten Eyck*, 297 U. S. 251, the Court had under consideration the validity of an act of the New York Legislature, namely, the Milk Control Law, which provided for a differential of one cent between the prices of milk bearing well-known trade names and those bearing trade names which were not well known. It was contended that such a differential based upon an "arbitrary" classification denied the equal protection of the laws. It was urged that the classification was arbitrary because it put the appellant and other dealers who had well-advertised trade names in a single class solely by reason of the fact that their legitimate advertising had brought them good-will. The Court, however, held that since the differential had ex-

isted before the enactment of the legislation, and had been established because in the course of business it had been found that the dealers whose trade names were not well advertised could only meet the competition of those dealers with well-advertised names by under-selling them, that the Legislature was justified in perpetuating this classification.

In *Old Dearborn Co. v. Seagram Corporation*, 299 U. S. 183, the Court had under consideration the Fair Trade Act of Illinois which provided, among other things, that the resale price of goods identified by a trade-mark, brand or name, might be controlled by the manufacturer. Section 2 of the Act provided that wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in a contract made consistently with Section 1, whether or not the person doing so is or is not a party to the contract, shall constitute unfair competition, giving rise to a right of action in favor of anyone damaged thereby. Section 2 was challenged on the ground that it denied the equal protections of the laws. The Court disposed of this contention in the following words at page 197:

“The contention that sec. 2 of the act denies the equal protection of the laws in violation of the Fourteenth Amendment proceeds upon the view that it confers a privilege upon the producers and owners of goods identified by trade-mark, brand or name, which it denies in the case of unidentified goods. As this Court many times has said, the equal protection clause does not preclude the states from resorting to classification for the purposes of legislation. It only requires that the classification ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’”

Colgate v. Harvey, 296 U. S. 404, 422, 423, and cases cited.

"Clearly, the challenged section of the Illinois act satisfies this test. *Enough appears already in this opinion to show the essential difference between trade-marked goods and others not so identified. The entire struggle to bring about the legislation such as the Illinois act embodies has been based upon this essential difference.*" (Italics supplied.)

In view of the foregoing, it is urged that there is a real and substantial difference between trade-marks and labels which are used for the first time outside of a small island in a market so vast as the continental United States, and labels which for many years have enjoyed a fame and notoriety by being used on products distributed in that market. This difference is one which can be recognized by a legislature in forming legislation intended to foster and encourage the new industry which produced the product bearing the comparatively unknown label. The fact that the challenged legislation prohibits the use of all foreign labels within the same class, does not bring such legislation within the condemnation of the equal protection clause as it merely treats all in the same class on the same basis. This is all that is required to satisfy the requirements of equal protection, because it is equality.

POINT IV.

The Puerto Rican law does not violate the treaty adopted by the Inter-American Convention for Trade-marks and Commercial Protection.

A. Neither the terms nor the intent of the Convention prohibit a local legislature from exercising its police powers.

The avowed purpose of the Convention was to negotiate

"* * * for the protection of trade marks, trade names and for the repression of unfair competition and false indications of geographical origin" (Treaty Series No. 833, pp. 2-3).

The Convention intended to preserve the integrity of trade-marks and trade names from duplication and did not mean to guarantee to the holder of a trade-mark the right to do business wherever the holder determined, irrespective of local legislation. This was the interpretation of the Treaty which was adopted by the Circuit Court of Appeals.

"Its purpose was to prevent piracy of trademarks, a matter which is not here involved. It was not intended to have and does not have the effect of invalidating local laws and regulations of the type here in question." 109 F. (2d) 57, 64 (C. C. A. 1st 1940).

This interpretation, petitioner says, (Petitioner's brief, p. 30) depends "upon a narrow construction of the words of the treaty," although the treaty recites that it is undertaken in the "broadest scope". What the treaty recites is that the respective signatory governments "considering it necessary" to revise the existing "Convention for the

Protection of Commercial, Industrial and Agricultural Trade Marks and Commercial Names" and "animated by the desire to reconcile the different juridical systems which prevail in the several American Republics and convinced of the necessity of undertaking this work in its broadest scope, *with due regard for the respective national legislations . . .*" (Italics supplied.)

In other words, the various commissioners met to bring the then existing Convention down to date and to embody in the new Convention certain reforms, and they intended to undertake the work in its "broadest scope" but always "with due regard for the respective national legislations." The recitation in the treaty concerning "broadest scope" does not require that the provisions be extended far beyond the meaning they would have under the general canons for interpreting treaties.

There is a great deal of loose talk in petitioner's brief about "protection" which petitioner argues is given to trade-marks and trade names by the treaty. On page 29 of petitioner's brief we are told that "Articles 3 and 11 taken together" are evidence of an intention that the owner of a trade-mark "shall receive the same protection . . . that he is entitled to claim in his own country." On page 30, after making the claim that the Puerto Rican statutes bring about unfair competition "as though the competitors by law, were made free to use petitioner's marks" the argument runs: "In both cases petitioner needs and can rely upon the 'protection' which the treaty explicitly gives." Again on page 30 it is stated: "By no stretch of the imagination can the United States be said to fulfill its treaty obligation to *protect* these marks, when one of its territories seizes upon the very fact of their foreign origin and use to impose penalties."

Obviously, petitioner is seeking to have the terms "protect" and "protection" understood in the broad sense of being defended from all harm or interference. The right upon which petitioner insists, however, is one given by a treaty, not the dictionary or the common understanding of mankind. "To determine the nature and extent of the right we must look to the treaty which created it," Stone J. in *Factor v. Laubenheimer*, 290 U. S. 276, 287.

With this admonition of the Court in mind, intervenor-respondent sets forth below those portions of the Convention and Protocol which use the words "protect" and "protection".

The Convention provides as follows:

"Chapter II"

"Article 7. Any owner of a mark *protected* in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

“Article 8. When the owner of a mark seeks the registration or deposit of the mark in a Contracting State other than that of origin of the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and those of either Paragraph (b) or (c) below:

“(a) That he enjoyed *legal protection* for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; * * *.

“Article 10. The period of *protection* granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made. * * *.

“Article 12. Any registration or deposit which has been effected in one of the Contracting States, or any pending application for registration or deposit, made by an agent, representative or customer of the owner of a mark in which a right has been acquired in another Contracting State through its registration, prior application or use, shall give to the original owner the right to demand its cancellation or refusal in accordance with the provisions of this Convention and to request and obtain the *protection* for himself, it being considered that such *protection* shall revert to the date of the application of the mark so denied or cancelled.

“Article 13. The use of a trade mark by its owner in a form different in minor or non-substantial elements from the form in which the mark has been

registered in any of the Contracting States, shall not entail forfeiture of the registration or impair the protection of the mark. * * *

“Chapter III

“Article 14. Trade names or commercial names of persons entitled to the benefits of this Convention shall be *protected* in all the Contracting States. Such *protection* shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade mark.

“Article 16. The *protection* which this Convention affords to commercial names shall be:

“(a) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

“(b) to prohibit the use, registration or filing of a trade mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States, engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade mark is intended.

“Article 19. The *protection* of commercial names shall be given in accordance with the internal legislation and by the terms of this Convention, and in all cases where the internal legislation permits, by the competent governmental or administrative authorities whenever they have knowledge or reliable proof of their legal existence and use, or otherwise upon the motion of any interested party.”

The Protocol contains the following provisions concerning "protect" or "protection":

"Article 1. Natural or juridical persons domiciled in or those who possess a manufacturing or commercial establishment or an agricultural enterprise in any of the States that may have ratified or adhered to the present Protocol, may obtain the *protection* of their trade marks through the registration of such marks in the Inter-American Trade Mark Bureau.

"Article 2. The owner of a mark registered or deposited in one of the Contracting States who desires to register it in any of the other Contracting States, shall file an application to this effect in the office of the country of original registration which office shall transmit it to the Inter-American Trade Mark Bureau, complying with the regulations. A postal money order or draft on a bank of recognized standing, in the amount of \$50.00, as a fee for the Inter-American Trade Mark Bureau, plus the amount of the fees required by the national law of each of the countries in which he desires to obtain *protection* for his mark, shall accompany such application.

"Article 3. Immediately on receipt of the application for the registration of a mark, and on determining that it fulfills all the requirements, the Inter-American Trade Mark Bureau shall issue a certificate and shall transmit by registered mail copies of the same accompanied by a money order for the amount required by the respective Offices of the States in which *protection* is desired. In the case of adhesions or ratifications of additional states after the registration of a mark, the Inter-American Bureau shall, through the respective offices of their countries, inform the proprietors of marks regis-

tered through the Bureau, of said adhesions or ratifications, informing them of the right that they have to register their marks in the new adhering or ratifying States, in which registration shall be effected in the manner above mentioned.

"Article 4. * * * In case *protection* is granted to the mark, it shall issue a certificate of registration in which shall be indicated the legal period of registration; which certificate shall be issued with the same formalities as national certificates and shall have the same effect in so far as ownership of the mark is concerned. This certificate of registration shall be sent to the Inter-American Trade Mark Bureau, which shall transmit it to the proprietor of the mark through the proper office of the country of origin.

"If, within seven months after the receipt by a Contracting State of an application for the *protection* of a trade mark transmitted by the Inter-American Trade Mark Bureau, the administration of such State does not communicate to the Bureau notice of refusal of *protection* based on the provisions of the General Inter-American Convention for Trade Mark and Commercial Protection such mark shall be considered as registered and the Inter-American Trade Mark Bureau shall so communicate to the applicant through the country of origin, and shall issue a special certificate which shall have the same force and legal value as a national certificate.

"In case *protection* of a mark is refused in accordance with the provisions of the internal legislation of a State or of the General Inter-American Convention for Trade Mark and Commercial Protection, the applicant may have the same recourse which the respective laws grant to the citizens of the state refusing protection. The period within which the recourse and actions granted by national laws may

be exercised shall begin four months after receipt by the Inter-American Trade Mark Bureau of the notice of refusal.

"The Inter-American registration of a trade mark communicated to the Contracting States, which may already enjoy *protection* in such States shall replace any other registration of the same mark effected previously by any other means, without prejudice to the rights already acquired by national registration.

"Article 10. The owner of a trade mark may at any time relinquish *protection* in one or several of the Contracting States, by means of a notice sent to the Administration of the country of origin of the mark, to be communicated to the Inter-American Bureau, which in turn shall notify the countries concerned."

In an annex to the Protocol we find the following:

"Article 1. The application to obtain *protection* under the Protocol of which the present Annex is a part shall be made by the owner of the mark or his legal representative to the administration of the State in which the mark has been originally registered or deposited in accordance with the provisions in force in that State, accompanied by a money order or draft payable to the Director of the Inter-American Trade Mark Bureau in the sum required by this Protocol. The application and money order shall be accompanied by an electrotype (10 x 10 centimeters) of the mark reproducing it as registered in the State of original registration."

It is submitted that the foregoing sections of the Convention and Protocol clearly demonstrate that the protection which the treaty affords is that protection which comes from registration of the trade-mark; that is against dupli-

cation and piracy. In none of those sections is there disclosed, either by the terms employed or by the general intent gathered from a consideration of all the sections, that anything more was intended.

Just as the meaning of protection is to be found only in the general terms of the treaty, so, also the meaning of unfair competition is set forth in Article 21. This Article contains a full statement of what is meant by unfair competition and it is useless to attempt to read any special meaning into the term "unfair competition," just as it is futile to attempt to give such a broad meaning to the term "protection" as petitioner contends for. Article 21 reads as follows:

"Article 21.

The following are declared to be acts of unfair competition and unless otherwise effectively dealt with under the domestic laws of the Contracting States shall be repressed under the provisions of this Convention:

(a) Acts calculated directly or indirectly to represent that the goods or business of a manufacturer, industrialist, merchant or agriculturist, are the goods or business of another manufacturer, industrialist, merchant or agriculturist or any of the other Contracting States, whether such representation be made by the appropriation or simulation of trade-marks, symbols, distinctive names, the imitation of labels, wrappers, containers, commercial names, or other means of identification;

(b) The use of false descriptions of goods by words, symbols or other means tending to deceive the public in the country where the acts occur, with respect to the nature, quality, or utility of the goods;

(c) The use of false indications or geographical origin or source of goods, by words, symbols, or

other means which tend in that respect to deceive the public in the country in which these acts occur;

(d) To sell, or offer for sale to the public an article, product or merchandise of such form or appearance that even though it does not bear directly or indirectly an indication of origin or source, gives or produces, either by pictures, ornaments or language employed in the text, the impression of being a product, article or commodity originating, manufactured or produced in one of the other Contracting States;

(e) Any other act or deed contrary to good faith in industrial, commercial or agricultural matters, which, because of its nature or purpose, may be considered analogous or similar to those above mentioned."

The Puerto Rican Law does not permit or open the road to the usurpation or simulation of trade names or symbols registered in any of the Contracting States. The contested law provides that no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico unless such person has a permit; and that holders of permits will not be permitted to distill liquor under trade names or trade-marks of a specified classification. This in no way violates the terms of the treaty.

B. The construction contended for by the petitioner conflicts with well-established principles.

Petitioner claims that under the terms of the treaty, there may be no discrimination against trade-marks of nationals of the Contracting Nations (Petitioner's Brief, p. 24). Petitioner construes the language of the treaty to mean that the owner of a trade-mark shall receive the

same protection and have the same latitude in dealing with the mark in all countries that are parties to the treaty, that such owner is entitled to claim in his own country (Petitioner's Brief, p. 29). Relying upon this construction of the treaty, petitioner concludes that a local legislature cannot limit the use of a trade-mark or discriminate against it.

This construction cannot be reconciled with the understanding that the courts of this country have of the function of trade-marks and the effect to be given to their registration. It is accepted by our courts that the function of a trade-mark is to designate the goods as the product of a particular trader and to protect his good-will against the sale of another product as his. *United Drug Co. v. Rectanus Co.*, 248 U. S. 90, 97; *Ph. Schneider Brewing Co. v. Century Distilling Co.*, 107 F. (2d) 699, 703. It is also accepted that the statutes providing for registration and assignment of trade-marks neither confer nor limit substantive rights, which are determined wholly by common law principles, but merely confer certain procedural advantages on the registrant.

In view of this understanding of our courts, the construction of the petitioner, which, as has been developed at pages 38-39 of this brief, cannot be found in the words of the Treaty, should not be written into the Treaty. In the absence of explicit language, unusual constructions should be avoided.

It is a well-established prerogative of a state to deny to any corporation the privilege of doing local business, and in order to do so, it is not necessary to outlaw the type of business. *Premier-Pabst Sales Co. v. Grosscup*, 298 U. S. 226; *Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court of Washington for Spokane County*,

289 U. S. 361; *Bank of Augusta v. Earle*, 13 Pet. 519. *A fortiori*, a sovereign country has the same prerogative.

If the position of petitioner is adopted, this prerogative is destroyed. By the simple expedient of registering a trade-mark in one of the countries which has adopted the Treaty, a corporation could force itself upon any Contracting Country which has denied it the privilege of doing local business. No other Signatory Country could discriminate against this corporation because it would possess a registered trade name and to discriminate against the corporation would also be a discrimination against the trade name. If the corporation is not permitted to do local business in that country, the trade name is proportionately of less value to it. To give the "same latitude in dealing with the mark in all other countries that are parties to the treaty, that he is entitled to claim in his own country" (Petitioner's Brief, p. 29), permission must be granted to the owner to do business under it in the same manner as the owner might conduct business in the country in which it had registered the mark.

It is not proper to assume that the Contracting Countries intended to produce this method of circumventing their control over local business. It is evident that when the Convention said "Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in other Contracting States" (Article 3), it was referring to protection against piracy of the mark.

That is was never intended that the Convention should do more than extend to nationals of the signatory countries the protection which each country gives to the trademarks of its own nationals is shown by Article I which reads:

"The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source."

Respondent denies that the Puerto Rican Law discriminated against trade-marks because of origin. The only discrimination is against trade-marks used outside of Puerto Rico or continental United States. This discrimination against use affects every individual and corporation whether a citizen of or incorporated in Puerto Rico, one of the States of the United States or elsewhere, and regardless of where the trade-mark originated.

Where the construction of a Treaty urged upon the Court would contravene established principles of law or justice, there has been evidenced an inclination to refuse such a construction for one more in keeping with the usual concepts of our jurisprudence. *Sanchez v. United States*, 216 U. S. 167.

A group of cases involving extraordinary rights conferred by state law, the benefit of which was limited to residents or citizens, shows a further application of the principle that the interest of a state in dealing with its own citizens and property, may influence the process of treaty interpretation.

In *Maiorano v. Baltimore & Ohio Railroad*, 213 U. S. 268, plaintiff, a resident of Italy, sued to recover for the

negligent homicide of her husband under the Pennsylvania Wrongful Death Act. The State Court having considered the Act as not permitting recovery by non-resident aliens, plaintiff appealed to the Supreme Court, claiming that this ruling denied to Italians who were non-residents, the equal "protection and security for their person" guaranteed by a treaty with Italy. The Court held that even though some measure of protection was actually and necessarily avoided by the statute and denied to plaintiff's husband in this case, still the protection and security involved were so "indirect and remote that the Contracting Powers cannot fairly be thought to have had them in contemplation."

When treaty provisions are considered in conjunction with the police powers of the states, a very strict construction is adopted. In *Patsone v. Pennsylvania*, 232 U. S. 138, an Italian citizen residing in Pennsylvania, appealed from a conviction for the offense of owning a shotgun in violation of a state law forbidding aliens to shoot wild birds or animals, except in defense of persons or property, and, to that end, forbidding the possession of shotguns or rifles. His contention was that the law violated the statute and the treaty with Italy which was considered in the *Maiorano* case, *supra*. After holding that the classification and means adopted to safeguard the State's interest in the preservation of game were reasonable under the Fourteenth Amendment, the Court gave scant attention to the treaty question.

In *Ohio ex rel. Clarke v. Deckebach*, 274 U. S. 392, the Supreme Court held that the treaty with Great Britain, which gave merchants and traders of that nation the right to carry on their commerce with the United States, did not invalidate a Cincinnati ordinance forbidding the operation of poolrooms by aliens as applied to the relator, a British citizen.

Puerto Rico has legislated to protect its revived liquor industry. In so doing it has exercised its police power. The express wording of the treaty does not forbid such legislation. The cases which have been set forth above are authority against stretching the wording of the treaty so as to bring the statute in conflict with it.

POINT V.

Neither the prohibition of the use of certain labels or trademarks nor the prohibition of the shipment or importation of rum in containers holding more than one gallon violate the Commerce Clause of the Federal Constitution.

A. The Commerce Clause does not extend to Puerto Rico.

The commerce clause gives Congress the power to "regulate commerce with foreign nations, among the several states and with the Indian Tribes." Art. I, Sec. 8, cl. 3. Puerto Rico is not a foreign nation; it is not a state, and most certainly it is not an Indian tribe.

The power of Congress to regulate the commerce between an insular possession and any other place does not derive from the commerce clause but from its general power over territory belonging to the United States given it by Article IV, Sec. 3, Cl. 2. *Ex parte Hanson*, 28 F. 127.

The Circuit Court of Appeals in the case at bar expressly held that the commerce clause does not extend to Puerto Rico:

"* * * The commerce clause (U. S. C. A. Constitution, Article 1, Section 8, Clause 3) grants the Congress power 'To regulate Commerce with foreign Nations, and among the several States, and with the

Indian Tribes.' By necessary implication, it prevents a state from regulating such commerce. But Puerto Rico is not a state. It is an organized Territory of the United States though not yet 'incorporated' into the Union, *Puerto Rico v. Shell Co.*, 302 U. S. 253, 58 S. Ct. 167, 82 L. Ed. 235 and the indubitable right of the Congress to regulate the commerce of Puerto Rico is founded on the Constitutional power 'to dispose of and make all needful Rules and Regulations respecting the Territory or Regulations respecting the Territory or other Property belonging to the United States.' (Constitution, Article IV, Section 3, Clause 2.) The power is in no direct sense dependent upon the Commerce clause which as this court has said 'does not extend to Puerto Rico'. *Lugo v. Suazo*, 1 Cir., 59 F. 2d 386, 390. Cf. *Inter-Island Steam Navigation Co. v. Hawaii*, 9 Cir., 96 F. 2d 412.

"The decree of the District Court declaring such legislation unconstitutional can not be affirmed upon the ground that the Puerto Rican statutes violate the commerce clause of the Constitution of the United States" (R. 435, 436).

Since the clause does not extend to Puerto Rico, it is obvious that the enactments of the Puerto Rican Legislature do not violate it.

B. Even if this Court holds that the Commerce Clause does extend to Puerto Rico, still, the contested statute does not violate it.

1. The prohibition of distillation under a specified classification of trade names has no more extraterritorial effect than a total prohibition. If no liquor can be produced, none can be sold. The fact that a distiller located in one state sells his product in another would not deny to the former the right to prohibit the distillation. The fact

that a distiller intends to transport beyond the state does not lessen the power of the state to control the manufacture. *Kidd v. Pearson*, 128 U. S. 1; *Hudson County Water Co. v. McCarter*, 209 U. S. 349.

2. The power of Congress over matters national in character does not prevent states from exercising their police power. *Ziffrin, Inc., v. Reeves*, 308 U. S. 132. A State statute may take private property out of the commerce clause and may outlaw such private property in a proper exercise of the police power. *Sligh v. Kirkwood*, 237 U. S. 52. And in *Ziffrin, Inc., v. Reeves*, at page 140, the Court said:

“We cannot accept appellant’s contention that because whiskey is intended for transportation beyond the state lines the distiller may disregard the inhibition of the statute by delivery to one not authorized to receive; that the carrier may set at naught inhibitions and transport contraband with impunity.”

3. What is a proper exercise of the police power?

“* * * The police power, in its broadest sense, includes all legislation and almost every function of civil government. *Barbier v. Connolly*, 113 U. S. 27. It is not subject to definite limitations, but is co-extensive with the necessities of the case and the safeguards of public interest. *Camfield v. United States*, 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health. *Chicago &c. Railway v. Drainage Commissioners*, 200 U. S. 561, 592. In one of the latest utterances of this court upon the subject, it

was said: 'Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity.' * * * And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.' *Eubank v. Richmond*, 226 U. S. 137, 142."

Sligh v. Kirkwood, 237 U. S. 52, 59.

In *Ziffrin, Inc., v. Reeves*, 308 U. S. 132, the Supreme Court allowed Kentucky to prohibit the shipment of contraband liquor out of Kentucky and held valid a statute which declared liquor contraband upon delivery to an interstate carrier that did not possess a Transporter's License issued by Kentucky. This burden on shipment out of the state was sustained even though the result was to reduce the revenue of an established business with a large investment in Kentucky. Unquestionably this did affect interstate commerce, but the Court sustained the legislation as a proper exercise of the police power.

"Kentucky has seen fit to permit the manufacture of whiskey only upon condition that it be sold to an indicated class of customers and transported in definitely specified ways. These conditions are not unreasonable and are clearly appropriate for effectuating the policy of limiting traffic in order to minimize well known evils and secure payment of revenue. The statute declares whiskey removed from permitted channels contraband subject to immediate seizure. This is within the police power of

the State; and property so circumstanced cannot be regarded as a proper article of commerce" (p. 139).

In *Sligh v. Kirkwood*, 237 U. S. 52, the Court held that it was within the police power of the State of Florida to make it a criminal offense to deliver for shipment in interstate commerce citrus fruits then and there immature and unfit for consumption. The legislation was recognized as a proper method of protecting the reputation of the State in foreign markets.

A limitation by the Puerto Rican statute upon shipment in bulk is a necessary part of the legislation enacted to preserve for the renascent liquor industry in Puerto Rico the protection afforded by the import duty on foreign liquor. Without such limitation there is danger that liquor distilled in Puerto Rico might be shipped in bulk to the United States and there bottled under internationally known trade names and sold free of import duty.

This legislation is within the range of the police power. The purpose back of the legislation differs little from that which motivated the legislature of the State of Florida. It has a reasonable relation to a legitimate purpose to be accomplished in its enactment, and whether such regulation is necessary in the public interest is primarily within the determination of the legislature.

The Puerto Rican statute does not come within that class of legislation condemned, because, though nominally of local concern, it is aimed primarily at interstate commerce. It was to end such practices that the commerce clause was adopted. See *South Carolina Highway Department v. Barnwell Brothers, Inc.*, 303 U. S. 177, and the cases cited at page 186. The Puerto Rican statute is dealing with a matter of local concern and to effect that purpose inci-

dentially affects interstate commerce. The local matter dealt with is the protection of a home industry which was at a standstill during the era of prohibition and now needs protection from companies which had not suffered the same set-back. There is no attempt to curtail or affect the production of liquor outside of Puerto Rico.

Petitioner relies heavily upon *Foster-Fountain Packing Company v. Haydel*, 278 U. S. 1, which held invalid a local regulation ostensibly designed to conserve a natural resource, but the purpose and effect of which was to benefit Louisiana enterprise *at the expense of businesses outside the State* and compel their removal to Louisiana. If held valid, the statute would have compelled a canning company operating in Mississippi to come to Louisiana or go out of business. In the case at bar, the statute has no such effect. True, it is designated to benefit the Puerto Rican liquor industry, but not at the expense of any business located outside of Puerto Rico. The Bacardi Corporation of America will not be forced out of business. The situation of all distilleries located outside of Puerto Rico remains the same after the enactment of the statute as before. The statute has no extraterritorial effect.

The *Foster* case was not followed in *Bayside Fish Company v. Gentry*, 297 U. S. 422. California prohibited the reduction of fish for fertilization purposes to an extent which might tend to deplete the species or result in waste or deterioration of fish. In respect to the canning of fish, the number of sardines per ten-ounce can was limited to eight fish and not less than one ounce of olive oil per can could be used in such canning. In upholding this legislation, the Supreme Court distinguished *Foster Packing Company v. Haydel* on the grounds that although the ostensible purpose of the Louisiana act was to conserve the raw shell

for local use, the real purpose was to bring about the removal of the packing and canning industries from Mississippi to Louisiana. On the other hand, the California act had no such extraterritorial effect; in purpose and in direct operation it was confined to a mere local activity, and if it affected interstate or foreign commerce the result was purely incidental.

The climate, water and location of Puerto Rico gives it an advantage in the distillation of rum which Puerto Rico is entitled to preserve and protect for the sole benefit of concerns using trade names indigenous to Puerto Rico or continental United States; and, provided that it does not discriminate against enterprises located outside of Puerto Rico, the commerce clause is not violated, though it may be incidentally affected. As has already been pointed out, outside businesses are not affected, except in that they will have to compete with Puerto Rican distilleries protected from foreign companies by the import duty, from distilleries in continental United States. In *South Carolina Highway Department v. Barnwell, Inc.*, 303 U. S. 177, legislation was held valid though it affected interstate commerce. The Court said at page 189:

“The nature of the authority of the state over its own highways has often been pointed out by this Court. It may not, under the guise of regulation, discriminate against interstate commerce. But ‘In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.’ *Morris v. Duby*, 274 U. S. 135, 143. This formulation has been repeatedly affirmed, *Clark v.*

Poor, 274 U. S. 554, 557; *Sprout v. South Bend*, 277 U. S. 163, 169; *Sproles v. Binford*, 286 U. S. 374, 389, 390; cf. *Morf v. Bingaman*, 298 U. S. 407, and never disapproved. This Court has often sustained the exercise of that power although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, applied alike to motor traffic moving interstate and intrastate. *Morris v. Duby, supra*; *Sproles v. Binford, supra*. Restrictions favoring passenger traffic over the carriage of interstate merchandise by truck have been similarly sustained. *Sproles v. Binford, supra*; *Bradley v. Public Utilities Comm'n*, 289 U. S. 92, as has the exaction of a reasonable fee for the use of the highways. *Hendrick v. Maryland*, 235 U. S. 610; *Kane v. New Jersey*, 242 U. S. 160; *Interstate Busses Corp. v. Blodgett*, 276 U. S. 245; *Morf. v. Bingaman, supra*; cf. *Ingels v. Morf*, 300 U. S. 290.

"In each of these cases regulation involves a burden on interstate commerce. But so long as the state action does not discriminate, the burden is one which the Constitution permits because it is an inseparable incident of the exercise of a legislative authority, which, under the Constitution, has been left to the states."

The same principles apply here. If the prohibition against the shipment of rum in containers holding more than one gallon "involves a burden on interstate commerce" it is "an inseparable incident of the exercise of a legislative authority" which Puerto Rico undoubtedly has.

POINT VI.

There is no conflict with the Federal Alcohol Administration Act.

The Federal Alcohol Administration Act does not supersede or annul state or territorial legislation on the question of manufacture and sale of alcoholic liquors. If it were true, as the petitioner says at page 54 of its brief, that "The entire interstate and foreign commerce in rum is regulated by the Federal Alcohol Administration Act, which became law on August 29, 1935 and was amended June 26, 1936", then it is difficult to understand how this Court recognized the power of the State of Kentucky to impose limitations upon the shipment of whiskey out of Kentucky. This was the case of *Ziffrin, Inc. v. Reeves*, 308 U. S. 132, decided last term. Actually, Congress intended the Act to dovetail with proper state legislation. This is evident from the words of section 4 of the Act, wherein is a statement of who shall be entitled to permits:

"Sec. 4. Permits.

"(a) *Who entitled thereto.* The following persons shall, on application therefor, be entitled to a basic permit:

* * * * *

"(2) Any other person unless the Administrator finds * * * (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted." (Italics supplied.)

A further recognition of the power of the states to legislate in the field of intoxicating liquor is manifested by

the fact that the basic permits which the petitioner received are each:

"Conditioned upon compliance with . . . the laws of all states in which you engage in business" (R. 272, 273).

The Circuit Court of Appeals decided that the Federal Act did not preclude state action and that the Puerto Rican statute did not conflict with the terms of the Federal Act.

"As to labels, the Federal Alcohol Administration Act, aiming at unfair competition and other unlawful practices, forbids the introduction into interstate or foreign commerce of liquor unless labelled in accordance with regulations established by the Administration in such a way as to prevent deception of the consumer and the like. Such being the purpose of the Act, its effect was not to deprive the Legislature of Puerto Rico of the right to enact the territorial statute restricting the use of labels.

"Nor does it seem to us correct to say, as does the appellee, that 'the Federal statute authorizes shipment in bulk in containers of more than one gallon.' What the statute does is to forbid the disposition of liquor in bulk except in pursuance of regulations of the Federal Alcohol Administration. We cannot read into this statute an intent upon the part of the Congress to bar the territorial statutes governing shipments in bulk.

"Consistent with the view that the Federal Alcohol Administration Act was not intended to deprive territories of the right, in the exercise of their police powers, to limit the use of labels, or to limit the size of containers to be used under certain circumstances, is the form of permit received by the appellee, which is expressly 'conditioned upon compliance with the laws of all states' in which the applicant engages in

business. We are concerned here not with Congressional power but with the question whether Congress has so exercised that power as to close the door to the territorial legislation here considered. In *McDermott v. Wisconsin*, 228 U. S. 115, 33 S. Ct. 431, 57 L. Ed. 754, 47 L. R. A., N. S., 984, Ann. Cas. 1915A, 39, on which the appellee relies, the right of a state to impose burdens upon or discriminate against Interstate Commerce was at stake and we think that case not at all controlling upon the present aspect of the case at bar. The District Court was right in not including among the conclusions of law requested by the appellee the ruling 'that Sections 40, 44 and 44(b) of Act No. 6 of June 30, 1936 as amended by Act No. 149 of May 15, 1937 are invalid as contrary to the Federal Alcoholic Administration Act'."

Sancho v. Bacardi Corp. of America, 109 F. 2d 57, 63.

The Federal Act is a recognition that traffic in intoxicating liquors requires stringent control. State legislation which imposes additional or basic restrictions may properly be called supplemental legislation with which anyone who would abide by the provisions of the Federal Act must comply.

The ruling by this Court concerning the Federal Motor Carrier Act, 1935, 49 U. S. C. A. 201, *et seq.*, in *Ziffrin, Inc., v. Reeves*, 308 U. S. 132, is precedent for the statement that Act 149 of the Puerto Rican Legislature does not conflict with the Federal Alcohol Administration Act. In the *Ziffrin* case, the petitioner held a permit under the Motor Carrier Act, but was denied a transporter's license by the State of Kentucky and without such license it could not carry intoxicants, even though the carriage was to be in

interstate commerce. In view of the asserted intention of Congress to regulate and coordinate transportation, it may be easier to visualize a conflict between the Kentucky statute and the Motor Carrier Act than it should be to find a conflict between the Puerto Rican statute and the Federal Alcohol Administration Act. Section 2 of the Motor Carrier Act of 1935 reads:

"Sec. 2. Declaration of policy and delegation of jurisdiction to Interstate Commerce Commission.

"(a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this chapter."

The decision of the Court in *Ziffrin, Inc., v. Reeves*, *supra*, should be directly applicable to the case at bar. At pages 140-141, the Court said:

"The Motor Carrier Act of 1935 is said to secure to appellant the right claimed [appellant claims the right to transport liquor out of the State of Ken-

tucky], but we can find nothing there which undertakes to destroy state power to protect her people against the evils of intoxicants or to sanction the receipt and conveyance of articles declared contraband. The Act has no such purpose or effect.

"The power of a state to regulate her internal affairs notwithstanding the consequent effect upon interstate commerce was much discussed in *South Carolina Hwy. Dept. v. Barnwell Bros.*, 303 U. S. 177, 189. There it was again affirmed that although regulation by the State might impose some burden on interstate commerce this was permissible when 'an inseparable incident of the exercise of a legislative authority, which, under the Constitution, has been left to the states'. In the absence of controlling language to the contrary—and there is none—the Federal Motor Carrier Act should not be brought into conflict with this reiterated doctrine."

It is submitted that the Federal Alcohol Administration Act is not in conflict with the Puerto Rican Act which was passed to protect the renascent liquor industry of Puerto Rico and thus to promote the public welfare and general prosperity.

Respectfully submitted,

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Appendix A.

Puerto Rican Statutes.

ACT No. 115, "ALCOHOLIC BEVERAGE LAW OF PUERTO RICO," approved May 15, 1936; Laws of 1936, regular session, pages 610, *et seq.*

Sec. 41. [Pertinent parts copied in Statement, *ante*, pp. 7-9; Laws of 1936, at pp. 640-646].

Sec. 97. * * *—and it shall be in effect until September 30, 1936, as it contains provisions of an experimental nature.

ACT No. 6, "SPIRITS AND ALCOHOLIC BEVERAGES ACT," approved June 30, 1936; Law of 1936, special session, pages 44, *et seq.*

To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40. Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum," in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said

rum was distilled. On the label of every alcoholic beverage shall also appear the word "Distilled," "Rectified," or "Blended," as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose [at p. 76].

Section 44. No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided, further*, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer [at p. 78].

ACT NO. 149, APPROVED MAY 15, 1937; Laws of 1937, regular session, pp. 392, 396.

To amend Section 1 by adding Section 1(B) which declares the Principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide

funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes"; to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act, by imposing conditions upon the holders of such permits; to add Section 44(B) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend Section 97 of said Act, by providing for remedies before the proper courts; to amend Section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.

Be it enacted by the Legislature of Puerto Rico:

Section 1. Section 1 is hereby amended by adding Section 1(b) to Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes," which section shall be as follows:

"Section 1. The short title of this Act shall be "Spirits and Alcoholic Beverages Act.

"Section 1(b). *Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital

so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 2. Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 40. Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (1/8) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled*, *rectified*, or *blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further*, That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears.'

Section 3. Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44. No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4. Section 44(b) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

"Section 44(b). Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided*, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto

Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5. Section 97 of Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 97. (a) Whenever the Treasurer of Puerto Rico is empowered by this Act to sell articles or products confiscated by him or his agents, the aggrieved natural or artificial person may appeal to the corresponding district court, and said court shall have jurisdiction, after hearing the interested parties, to confirm, revoke, or modify the decision of the Treasurer. Said appeal shall be filed within ten days after the interested person is notified.

"(b) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6. Section 106 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 106. An emergency is hereby declared to exist which requires that this Act take effect immediately, and, therefore, Act No. 6 entitled 'An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes,' which bears also the short title Spirits and Alcoholic Beverages Act, approved June 30, 1936, as amended, shall be in full force and effect beginning with the approval of this Act, for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of experimental nature. Such experimental nature is hereby abolished and its indefinite and permanent nature is recognized; and all laws or parts of laws in conflict herewith are hereby repealed."

Section 7. In regard to trade-marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.

Section 8. This Act shall take effect ninety days after its approval.

Appendix B.

Constitutional Provisions.

Article I, Section 8, Clause 3:

The Congress shall have Power. * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Article IV, Section 3, Clause 2:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

Fifth Amendment.

No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *.

Twenty-first Amendment, Sec. 3.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Appendix C.

THE ORGANIC ACT FOR PUERTO RICO, ACT OF MARCH 2,
1917, c. 145, 39 STAT. 951:

Section 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * *.

Appendix D.

FEDERAL ALCOHOL ADMINISTRATION ACT, 49 STAT. 977, c. 814.

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

*Be it enacted * * *, That this Act may be cited as the "Federal Alcohol Administration Act."*

Sec. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for re-sale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

Sec. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

Unfair Competition and Unlawful Practices.

Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: * * *

(e) *Labeling.* To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless

such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name

that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by

Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice),⁴ bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of

⁴ As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice.)"

such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or * * *

(f) *Advertising.* To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of dis-

tilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate. * * *

TREATY SERIES, No. 833

**TRADE MARK
AND COMMERCIAL PROTECTION
AND REGISTRATION OF TRADE MARKS**

**CONVENTION AND PROTOCOL
BETWEEN
THE UNITED STATES OF AMERICA
AND OTHER AMERICAN REPUBLICS**

Signed at Washington, February 20, 1929.

Ratification advised by the Senate of the United States, December 16, 1930 (legislative day of December 15, 1930).

Ratified by the President of the United States, February 11, 1931.

Ratification of the United States deposited with the Pan American Union, February 17, 1931.

Proclaimed by the President of the United States, February 27, 1931.



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1931

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

WHEREAS, a General Inter-American Convention for Trade Mark and Commercial Protection was signed by the respective Plenipotentiaries of the United States of America, Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua and Honduras, at Washington on the twentieth day of February, one thousand nine hundred and twenty-nine, and a Protocol on the Inter-American Registration of Trade Marks was signed on the same day by Plenipotentiaries of the said countries except Uruguay, Chile and Guatemala, which Convention and Protocol are word for word as follows:¹

¹ Orthographic mistakes which are in the certified copies of the convention and protocol furnished to the Department of State pursuant to Article 37 of the convention and Article 19 of the protocol have not been corrected in the texts herein printed.—EDITION.

(1)

CONVENCIÓN GENERAL INTER-AMERICANA DE PROTECCIÓN MARCARIA Y COMERCIAL

Los Gobiernos de Perú, Bolivia, Paraguay, Ecuador, Uruguay, República Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haití, Colombia, Brasil, México, Nicaragua, Honduras y Estados Unidos de América, representados en la Conferencia Panamericana de Marcas de Fábrica reunida en Washington conforme a las Resoluciones aprobadas el 15 de febrero de 1928 por la Sexta Conferencia Internacional Americana celebrada en la ciudad de la Habana y el 2 de Mayo del mismo año, en Washington, por el Consejo Directivo de la Unión Panamericana,

Considerando indispensable revisar la "Convención para la Protección de las Marcas de Fábrica, Comercio y Agricultura y Nombres Comerciales" firmada en Santiago de Chile el 28 de abril de 1923 que sustituyó a la "Convención para la Protección de Marcas de Fábrica y de Comercio" celebrada en Buenos Aires el 20 de agosto de 1910, a fin de introducir en ella las reformas aconsejadas por la práctica y el progreso del derecho;

Animados por el propósito de hacer compatibles los distintos sistemas jurídicos que en esta materia rigen en las varias Repúblicas Americanas; y

Convencidos de la necesidad de realizar ese esfuerzo en la forma más amplia que sea posible en las circunstancias actuales con el debido respeto a las respectivas legislaciones nacionales,

Han resuelto negociar la presente Convención para la protección marcaria y comercial y la represión de la competencia desleal y de las falsas indicaciones

GENERAL INTER-AMERICAN CONVENTION FOR TRADE MARK AND COMMERCIAL PROTECTION.

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Habana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan American Union at Washington,

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks" signed at Buenos Aires on August 20, 1910, with a view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indi-

CONVENÇÃO GERAL INTER-AMERICANA DE PROTECÇÃO DE MARCAS DE FABRICA E PROTECÇÃO COMMERCIAL.

Os Governos do Perú, Bolivia, Paraguay, Ecuador, Uruguay, Republica Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brasil, Mexico, Nicaragua, Honduras e dos Estados Unidos da America, representados na Conferencia Pan-Americanana de Marcas de Fabrica em Washington, de acordo com os termos da resolução adoptada a 15 de fevereiro de 1928, na Sexta Conferencia Internacional Americana em Havana e a resolução de 2 de maio de 1928, aprovada pelo Conselho Director da União Pan-Americanana em Washington.

Considerando que se torna necessaria a revisão da "Convenção para a Protecção das Marcas de Fabrica, Commercio e Agricultura e de Nomes Commerciaes" firmada em Santiago do Chile a 28 de abril de 1923, que substituiu a "Convenção para a Protecção de Marcas de Fabrica" assignada em Buenos Aires a 20 de agosto de 1910, com o fim de nella se introduzirem as reformas que o desenvolvimento da lei e da pratica tem tornado desejaveis;

Animados do desejo de reconciliar os diferentes systemas jurídicos que prevalecem nas diversas Republicas Americanas; e

Convencidos da necessidade de emprehender este trabalho no seu sentido mais amplo, devidamente respeitadas as respectivas legislações nacionaes;

Resolveram: negociar a presente Convenção para a protecção das marcas de fabrica e nomes comerciaes e para a repressão da concurrence desleal e falsas in-

CONVENTION GÉNÉRALE INTER-AMÉRICAINE POUR LA PROTECTION DES MARQUES DE FABRIQUE ET COMMERCIALE

Les Gouvernements du Pérou, de Bolivie, de Paraguay, de l'Équateur, de l'Uruguay, de la République Dominicaine, du Chili, de Panama, de Venezuela, de Costa Rica, de Cuba, de Guatemala, de Haïti, de Colombie, du Brésil, du Mexique, de Nicaragua, de Honduras et des États Unis représentés à la Conférence Pan-américaine de Marques de Fabrique tenue à Washington conformément aux termes de la résolution adoptée la 15 février 1928 à la Sixième Conférence des États Américains de La Havane, et de la résolution du 2 mai 1928 adoptée par le Conseil d'Administration de l'Union Panaméricaine à Washington;

Considérant qu'il est nécessaire de réviser la "Convention pour la Protection des Marques de Fabrique Commerciales, Industrielles et Agricoles et des Dénominations Commerciales" signée à Santiago, Chili, le 28 avril 1923, laquelle remplace la "Convention pour la Protection des Marques de Fabrique" signée à Buenos Ayres le 20 août 1910, dans le but d'y introduire les réformes que le développement du droit et la coutume ont rendu nécessaires;

Animés du désir de réconcilier les différents systèmes juridiques qui existent dans les diverses Républiques américaines; et

Convaincus de qu'il importe de donner à cette œuvre une portée aussi large que le permettent les conditions actuelles tout en respectant des législations nationales respectives,

Ont résolu de conclure la présente Convention pour la protection des marques de fabrique, du nom commercial et pour la répression de la concurrence déloyale et

de origen geográfico, nombrando para ese fin los siguientes delegados:

Perú:
Alfredo González-Prada.

Bolivia:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramírez.

Ecuador:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

República Dominicana:
Francisco de Moya.

Chile:
Óscar Blanco Viel.

Panamá:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manuel Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutiérrez.
Alfredo Bufill.

Guatemala:
Adrián Recinos.
Ramiro Fernández.

Haití:
Raoul Lizard.

Colombia:
Roberto Botero Escobar.
Pablo García de la Parra.

Brasil:
Carlos Delgado de Carvalho.

Méjico:
Francisco Suárez.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

cations of geographical origin, and for this purpose have appointed as their respective delegates,

Peru:
Alfredo Gonzalez-Prada.

Bolivia:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramirez.

Ecuador:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

Dominican Republic:
Francisco de Moya.

Chile:
Óscar Blanco Viel.

Panama:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manuel Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutierrez.
Alfredo Bufill.

Guatemala:
Adrian Recinos.
Ramiro Fernandez.

Paiti:
Raoul Lizard.

Colombia:
Roberto Botero Escobar.
Pablo García de la Parra.

Brazil:
Carlos Delgado de Carvalho.

Mexico:
Francisco Suárez.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

dicações de origem geographica, e nesse intuito nomearam os seus respectivos delegados, que são os seguintes:

Perú:
Alfredo González-Prada.

Bolivia:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramírez.

Ecuador:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

República Dominicana:
Francisco de Moya.

Chile:
Oscar Blanco Viel.

Panamá:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manual Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutiérrez.
Alfredo Bufill.

Guatemala:
Adrián Recinos.
Ramiro Fernández.

Haití:
Raoul Lizaire.

Colombia:
Roberto Botero Escobar.
Pablo García de la Parra.

Brasil:
Carlos Delgado de Carvalho.

Méjico:
Francisco Suástegui.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

des fausses indications géographiques d'origine et dans ce but ont nommé leurs délégués respectifs, à savoir:

Pérou:
Alfredo González-Prada.

Bolivie:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramírez.

Équateur:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

République Dominicaine:
Francisco de Moya.

Chili:
Oscar Blanco Viel.

Panama:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manuel Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutiérrez.
Alfredo Bufill.

Guatemala:
Adrián Recinos.
Ramiro Fernández.

Haití:
Raoul Lizaire.

Colombie:
Roberto Botero Escobar.
Pablo García de la Parra.

Brésil:
Carlos Delgado de Carvalho.

Mexique:
Francisco Suástegui.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

Estados Unidos de América:

Francis White.

Thomas E. Robertson.

Edward S. Rogers.

Quienes, después de haber depositado sus credenciales, que fueron halladas en buena y debida forma por la Conferencia, han convenido lo siguiente:

CAPÍTULO I.

DE LA IGUALDAD DE NACIONALES Y EXTRANJEROS ANTE LA PROTECCIÓN MARCIA Y COMERCIAL

Artículo 1.

Los Estados Contratantes se obligan a otorgar a los nacionales de los otros Estados Contratantes y a los extranjeros domiciliados que posean un establecimiento fabril o comercial o una explotación agrícola en cualquiera de los Estados que hayan ratificado o se hayan adherido a la presente Convención, los mismos derechos y acciones que las leyes respectivas concedan a sus nacionales o domiciliados con relación a marcas de fábrica, comercio o agricultura, a la protección del nombre comercial, a la represión de la competencia desleal y de las falsas indicaciones de origen o procedencia geográficos.

CAPÍTULO II.

DE LA PROTECCIÓN MARCIA

Artículo 2.

El que deseé obtener protección para sus marcas en un país distinto al suyo en que esta Convención rija, podrá obtener dicha protección bien solicitándola directamente de la oficina correspondiente del Estado en que

United States of America:

Francis White.

Thomas E. Robertson.

Edward S. Rogers.

Who, after having deposited their credentials, which were found to be in good and due form by the Conference, have agreed as follows:

CHAPTER I.

EQUALITY OF CITIZENS AND ALIENS AS TO TRADE MARK AND COMMERCIAL PROTECTION.

Article 1.

The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source.

CHAPTER II.

TRADE MARK PROTECTION.

Article 2.

The person who desires to obtain protection for his marks in a country other than his own, in which this Convention is in force, can obtain protection either by applying directly to the proper office of the State in which he

Estados Unidos da America:
Francis White.
Thomas E. Robertson.
Edward S. Rogers.

Os quaes, depois de terem depositado as suas credenciaes, que foram achadas em boa e devida forma pela Conferencia, concordaram no seguinte:

CAPITULO I.

EGUALDADE DE NACIONAIS E EXTRANGEIROS NO QUE DIZ RESPEITO Á PROTECÇÃO DE MARCAS DE FABRICA E Á PROTECÇÃO COMMERCIAL.

Artigo 1.

Os Estados Contractantes se obligam a outorgar aos nacionais dos outros Estados Contractantes e a estrangeiros domiciliados que possuam um estabelecimento fabril ou desenvolvimento agricola em qualquer dos Estados que tenham ratificado ou aderido à presente Convenção, os mesmos direitos e os mesmos recursos que as suas leis concedem aos seus próprios nacionais ou pessoas domiciliadas no respeito a marcas de fabrica, nomes commerciaes, e expressão de concurrencia desleal e falsas indicações de origem e procedencia geographicá.

CAPITULO II

PROTECÇÃO DAS MARCAS DE FABRICA.

Artigo 2.

A pessoa que desejar obter protecção para as suas marcas em um paiz que não seja o seu proprio paiz, no qual estiver em vigor esta Convenção, poderá obter tal protecção ou mediante pedido directamente à correspon-

États Unis d'Amérique:
Francis White.
Thomas E. Robertson.
Edward S. Rogers.

Lesquels, après avoir déposé leurs lettres de créances qui ont été reconnues en bonne et due forme par la Conférence, ont convenu de ce qui suit:

CHAPITRE I.

ÉGALITÉ DES NATIONAUX ET DES ÉTRANGERS DANS LA PROTECTION DES MARQUES DE FABRIQUE ET COMMERCIALE.

Article 1^e.

Les États contractants s'engagent à accorder aux nationaux des autres États contractants, ainsi qu'aux étrangers domiciliés qui possèdent un établissement industriel ou commercial, ou une entreprise agricole dans l'un quelconque des États qui ont ratifié la présente Convention ou qui y ont adhéré, les mêmes droits et recours que leurs propres lois octroient à leurs propres nationaux ou résidents en ce qui concerne marques de fabrique commerciales ou agricoles, la protection du nom commercial, la répression de toute concurrence déloyale et les fausses indications géographiques d'origine ou de provenance.

CHAPITRE II.

PROTECTION DES MARQUES DE FABRIQUE.

Article 2.

Toute personne qui désire obtenir la protection de ses marques dans un pays autre que le sien, dans lequel la Convention est en vigueur, peut l'obtenir en s'adressant soit directement au service correspondant de l'Etat dans le-

desea obtener la referida protección, o por medio de la Oficina Interamericana de Marcas a que se refiere el Protocolo sobre Registro Interamericano, siempre que dicho Protocolo haya sido aceptado por su país y por la nación donde se solicite la protección.

desires to obtain protection, or through the Inter-American Trade Mark Bureau referred to in the Protocol on the Inter-American Registration of Trade Marks, if this Protocol has been accepted by his country and the country in which he seeks protection.

Artículo 3.

Toda marca debidamente registrada o legalmente protegida en uno de los Estados Contratantes será admitida a registro o depósito y protegida legalmente en los demás Estados Contratantes, previo el cumplimiento de los requisitos formales establecidos por la ley nacional de dichos Estados.

Podrá denegarse o cancelarse el registro o depósito de marcas:

1. Cuyos elementos distintivos violen los derechos previamente adquiridos por otra persona en el país donde se solicita el registro o depósito.

2. Que están desprovistas de todo carácter distintivo o consistan exclusivamente en palabras, signos o indicaciones que sirven en el comercio para designar la clase, especie, calidad, cantidad, destino, valor, lugar de origen de los productos, época de producción, o que son o hayan pasado a ser genéricas o usuales en el lenguaje corriente o en la costumbre comercial del país al tiempo en que se solicite el registro o depósito, cuando el propietario de la marca las reivindique o pretenda reivindicarlas como elementos distintivos de la misma.

Para determinar el carácter distintivo de una marca, deberán tomarse en consideración todas las circunstancias existentes, en especial la duración del uso de la

Article 3.

Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

Registration or deposit may be refused or cancelled of marks:

1. The distinguishing elements of which infringe rights already acquired by another person in the country where registration or deposit is claimed.

2. Which lack any distinctive character or consist exclusively of words, symbols, or signs which serve in trade to designate the class, kind, quality, quantity, use, value, place of origin of the products, time of production, or which are or have become at the time registration or deposit is sought, generic or usual terms in current language or in the commercial usage of the country where registration or deposit is sought, what the owner of the marks seeks to appropriate them as a distinguishing element of his mark.

In determining the distinctive character of a mark, all the circumstances existing should be taken into account, particularly the duration of the use of the

dente repartição do Estado em que pretenda obter a referida protecção ou por intermedio da Secretaria Inter-Americanica de Marcas de Fabrica referida no Protocollo sobre o Registro Inter-Americanico de Marcas de Fabrica, com tanto que esse Protocollo tenha sido aceito pelo seu paiz e pelo paiz no qual deseje protecção.

Artigo 3.

Toda a marca devidamente registrada ou legalmente protegida em um dos Estados Contractantes será admittida a registro ou deposito e legalmente protegida nos outros Estados Contractantes, mediante cumprimento das disposições formaes da lei nacional dos mesmos Estados.

O registro ou o deposito poderá ser recusado ou cancellado no caso das marcas:

1. Cujos elementos distintivos infrinjam direitos previamente adquiridos por outrem no paiz em que se requer registro ou deposito.

2. Nas quacs faltar qualquer caracter distintivo ou que constarem exclusivamente em palavras, symbolos, ou signaes destinados no commercio a designar a classe, natureza, qualidade, quantidade, uso, valor, logar de origem dos productos, epoca de producção ou que sejam ou tinhão chegado a ser na occasião do pedido de registro ou deposito, termos genericos ou comuns da linguagem corrente ou do uso commercial do paiz em que se requer registro ou deposito, ou quando o proprietario da marca pretender apropiar-as como elemento distintivo de sua marca.

No determinar o caracter distintivo de uma marca, devem-se tomar em conta todas as circunstancias existentes, principalmente o prazo de duração do uso

quel il désire obtenir cette protection, soit par l'intermédiaire du Bureau Interaméricain des Marques de Fabrique auquel se réfère le protocole annexe, si ce protocole a été accepté par son pays aussi bien que par le pays dans lequel il demande protection.

Article 3.

Toute marque dûment enregistrée et légalement protégée dans un des Etats contractants sera admise à l'enregistrement ou au dépôt et légalement protégée dans les autres Etats contractants en se conformant aux prescriptions y relatives de la législation de ces Etats.

L'enregistrement ou le dépôt peut être refusé ou annulé pour les marques:

1. Dont les éléments distinctifs enfreignent les droits déjà acquis par une autre personne dans le pays où la protection est demandée.

2. Qui sont dépourvus de tout caractère distinctif ou qui consistent exclusivement en termes, symboles ou signes qui servent dans le commerce à désigner l'espèce, le genre, la qualité, la quantité, l'usage, le lieu d'origine des produits, l'époque de production, ou qui sont ou sont devenus au moment de la demande d'enregistrement ou de dépôt des termes génériques ou usuels soit dans le langage courant, soit dans la pratique commerciale du pays où l'on demande la protection ou le dépôt lorsque le propriétaire des marques cherche à se les approprier comme éléments distinctifs de ses marques.

Pour déterminer le caractère distinctif d'une marque, il y a lieu de tenir compte de toutes les circonstances existantes, particulièrement de la durée de l'usage

marca y si dicha marca ha adquirido de hecho en el país en que se solicite el depósito, registro o protección, una significación distintiva de la mercancía del solicitante.

3. Que ofendan a la moral pública o sean contrarias al orden público.

4. Que ridiculicen o tiendan a ridiculizar personas, instituciones, creencias o símbolos nacionales o de asociaciones de interés público,

5. Que contengan representaciones de tipos raciales o paisajes típicos o característicos de cualquiera de los Estados Contratantes distinto al de origen de la marca.

6. Que tengan entre sus elementos distintivos principales, frases, nombres o lemas que constituyan el nombre comercial o la parte esencial o característica del mismo, perteneciente a alguna persona dedicada a la fabricación, comercio o producción de artículos o mercancías de la misma clase a que se destine la marca, en cualquiera de los demás países contratantes.

Artículo 4.

Los Estados Contratantes acuerdan rehusar o cancelar el registro o depósito y prohibir el uso sin autorización de la autoridad competente, de las marcas que incluyan banderas nacionales o de los estados, escudos de armas, sellos nacionales o de los estados, dibujos de las monedas públicas o de los sellos de correo, certificados o sellos oficiales de garantía, o cualesquier insignias oficiales, nacionales o de los estados, o imitaciones de las mismas.

mark and if in fact it has acquired in the country where deposit, registration or protection is sought, a significance distinctive of the applicant's goods.

3. Which offend public morals or which may be contrary to public order.

4. Which tend to expose persons, institutions, beliefs, national symbols or those of associations of public interest, to ridicule or contempt.

5. Which contain representations of racial types or scenes typical or characteristic of any of the Contracting States, other than that of the origin of the mark.

6. Which have as a principal distinguishing element, phrases, names or slogans which constitute the trade name or an essential or characteristic part thereof, belonging to some person engaged in any of the other Contracting States in the manufacture, trade or production of articles or merchandise of the same class as that to which the mark is applied.

Article 4.

The Contracting States agree to refuse to register or to cancel the registration and to prohibit the use, without authorization by competent authority, of marks which include national and state flags and coats-of-arms, national or state seals, designs on public coins and postage stamps, official labels, certificates or guarantees or any national or state official insignia or simulations of any of the foregoing.

da marca e se de facto tenha adquirido no paiz em que se solicite deposito, registro ou protecção, a significação distintiva das mercadorias do registrante.

3. Que offendem a moral publica ou que forem contrarias á ordem publica.

4. Que tenderem a expor ao ridiculo ou ao desrespeito pessoas, instituições, crenças, symbolos nacionaes ou de associações de interesse publico.

5. Que contiverem representações de typos raciaes ou vistas tipicas ou caracteristicas de qualquer dos Estados Contractantes além do de origem da marca.

6. Que tiverem como elemento distintivo principal, phrases, nomes, ou lemas que constituam, ou, na sua totalidade ou em uma parte essencial e caracteristica, o nome pertencente a outra pessoa ocupada em qualquer dos outros Estados Contractantes no fabrico, negocio ou producção de artigos ou mercadorias da mesma especie que aquellas ás quaes se applica a marca.

Artigo 4.

Os Estados Contractantes concordam em recusar o registro ou cancellar o registro e prohibir o uso sem autorização da competente autoridade, de marcas que tragam bandeiras nacionaes ou estadaoas e escudos de armas, sellos nacionaes ou estadaoas, senhos tirados de moedas publicas e sellos do correio, rotulos publicos, certificados ou sellos de garantia, ou qualquer insignia oficial ou simulação de qualquer dos supramencionados objectos.

de la marque et de la question de savoir si en fait elle a acquis dans le pays où il en est demandé dépôt, l'enregistrement ou protection une signification distinctive des marchandises du requérant.

3. Qui offensent la morale publique ou qui peuvent être contraires à l'ordre public.

4. Qui ridiculisent ou tendent à ridiculiser les personnes, les institutions, les croyances ou les emblèmes religieux ou nationaux ou les associations d'intérêt public.

5. Qui comportent des gravures représentant des types de races ou de scènes typiques ou caractéristiques de l'un des états contractants autres que de celui dont la marque est originaire.

6. Qui ont comme élément distinctif principal des phrases, noms ou devises qui constituent le nom commercial ou une de ses parties essentielles ou caractéristiques appartenant à une personne qui se livre, dans un des autres états contractants à la fabrication, au commerce ou à la production des articles ou marchandises de la même catégorie que ceux auxquels s'applique la marque.

Article 4.

Les États contractants concordent de refuser ou de canceller l'enregistrement et d'interdire l'usage, sans l'autorisation des autorités compétentes, de marques qui comportent des drapeaux et armoiries nationaux ou d'états, les sceaux nationaux ou d'états, les motifs des pièces de monnaie ou des timbres poste, les sceaux officiels, certificats ou sceaux officiels de légalisation, ou tout autre insigne officiel national ou d'état ainsi que leurs imitations.

Artículo 5.

Las etiquetas, dibujos industriales, lemas, catálogos, anuncios o avisos que se usen para identificar o anunciar mercancías, gozarán de la misma protección que las marcas en los Estados Contratantes cuyas leyes así lo dispongan, de acuerdo con las prescripciones de la legislación local.

Artículo 6.

Los Estados Contratantes se comprometen a admitir a registro o depósito y a proteger las marcas de propiedad colectiva o que pertenezcan a asociaciones cuya existencia no sea contraria a las leyes del país de origen, aun cuando dichas colectividades no posean un establecimiento fabril, industrial, comercial o agrícola.

Cada país determinará las condiciones particulares bajo las cuales se podrán proteger las marcas de dichas colectividades.

Los Estados, Provincias o Municipios en su carácter de personas jurídicas, podrán poseer, usar, registrar o depositar marcas y gozarán en tal sentido de los beneficios de esta Convención.

Artículo 7.

Todo propietario de una marca legalmente protegida en uno de los Estados Contratantes conforme a su legislación interna, que tenga conocimiento de que alguna persona o entidad usa o pretende registrar o depositar una marca sustancialmente igual a la suya o susceptible de producir confusión o error en el adquirente o consumidor de los productos o mercancías a que se apliquen, tendrá el derecho de oponerse al uso, registro o depósito de la misma, empleando los medios,

Article 5.

Labels, industrial designs, slogans, prints, catalogues or advertisements used to identify or to advertise goods, shall receive the same protection accorded to trade marks in countries where they are considered as such, upon complying with the requirements of the domestic trade mark law.

Article 6.

The Contracting States agree to admit to registration or deposit and to protect collective marks and marks of associations, the existence of which is not contrary to the laws of the country of origin, even when such associations do not own a manufacturing, industrial, commercial or agricultural establishment.

Each country shall determine the particular conditions under which such marks may be protected.

States, Provinces or Municipalities, in their character of corporations, may own, use, register or deposit marks and shall in that sense enjoy the benefits of this Convention.

Article 7.

Any owner of a mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its regis-

Artigo 5.

Os Rotulos, desenhos industriais, divisas, letreiros, catalagos, ou annuncios usados para identificar ou anunciar mercadorias, receberão a mesma protecção que é outorgada a marcas de fabrica em paizes onde são consideradas como tales, mediante cumprimento das exigencias da lei nacional de marcas de fabrica.

Artigo 6.

Os Estados Contractantes concordam em admittir a registro ou deposito e a proteger as marcas collectivas e marcas de associações cuja existencia não fôr contraria ás leis do paiz de origem, mesmo quando tales collectividades não possuam um estabelecimento fabril, industrial, commercial ou agricola.

Cada paiz determinará as condições particulares debaixo das quais as marcas das referidas collectividades possam ser protegidas.

Os Estados, as Provincias ou as Municipalidades, no seu caracter de corporações, podem possuir, usar, registrar ou depositar marcas e nessa capacidade gozarão dos beneficios desta Convenção.

Artigo 7.

Qualquer dono de uma marca protegida em um dos Estados Contractantes na conformidade de sua legislacão interior, que souber que outra pessoa esteja usando ou procurando registrar ou depositar uma marca interrente em qualquer outro Estado Contractante, terá o direito de se opor ao uso, registro ou deposito da mesma e terá o direito de empregar todos os meios legaes, processos, ou recursos de que dispõe o paiz no qual a dita marca esteja sendo usada ou em

Article 5.

Les étiquettes, devises, dessins industriels, imprimés, catalogues ou réclames employés pour identifier ou pour faire connaitre les marchandises recevront la même protection que celle accordée aux marques de fabrique dans les pays où ils sont considérés comme tels en se conformant aux prescriptions de la loi nationale sur les marques de fabrique.

Article 6.

Les États contractants s'engagent à accepter à l'enregistrement ou au dépôt et à protéger les marques collectives ou d'associations dont l'existence n'est pas contraire aux lois du pays d'origine, même lorsque les dites associations ne possèdent aucune manufacture ou établissement industriel, commercial ou agricole.

Chaque pays déterminera les conditions particulières suivant lesquelles ces marques pourront être protégées.

Les États, provinces ou municipalités, en tant que personnes juridiques, peuvent posséder, employer, enregistrer ou déposer des marques et jouir ainsi des bénéfices de la présente Convention.

Article 7.

Tout propriétaire d'une marque légalement protégée dans l'un des États contractants conformément à la législation nationale, qui a connaissance qu'une autre personne fait usage ou cherche à enregistrer ou à déposer une marque faisant double emploi avec la sienne dans tout autre État contractant, aura le droit de s'opposer à un tel usage, enregistrement, ou dépôt et celui d'employer tous les moyens légaux de procédure ou de recours prévus dans le pays où la marque délic-

procedimientos y recursos legales establecidos en el país en que se use o pretenda registrar o depositar dicha marca, probando que la persona que la usa o intenta registrar o depositar, tenía conocimiento de la existencia y uso en cualquiera de los Estados Contratantes, de la marca en que se funde la oposición y que ésta se usaba y aplicaba y continúa usándose y aplicándose a productos o mercancías de la misma clase; y, en consecuencia, podrá reclamar para sí el derecho a usar preferente y exclusivamente, o la prioridad para registrar o depositar su marca en el país de que se trate siempre que lleve las formalidades establecidas en la legislación interna y en esta Convención.

Artículo 8.

Cuando el propietario de una marca solicite su registro o depósito en otro de los Estados Contratantes distinto al del de origen de la marca, y se le niegue por existir un registro o depósito previo de otra marca que lo impida por su identidad o manifiesta semejanza capaz de crear confusión, tendrá derecho a solicitar y obtener la cancelación o anulación del registro o depósito anteriormente efectuado, probando, conforme a los procedimientos legales del Estado en que se solicite la cancelación:

(a) que gozaba de protección legal para su marca en uno de los Estados Contratantes con anterioridad a la fecha de la solicitud del registro o depósito que trata de anular; y

(b) que el propietario de la marca cuya cancelación se pretende tenía conocimiento del uso, empleo, registro o depósito en cualquiera de los Estados Contratantes, de la marca en que se funda la acción de nulidad, para

tration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

Article 8.

When the owner of a mark seeks the registration or deposit of the mark in a Contracting State other than that of origin, the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply to and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and those of either Paragraph (b) or (c) below:

(a) That he enjoyed legal protection for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; and

(b) that the claimant of the interfering mark, the cancellation of which is sought, had knowledge of the use, employment, registration or deposit in any of the Contracting States of the mark for the specific goods to which said inter-

que esteja sendo requerido o seu registro ou deposito, e, mediante prova que a referida pessoa que estiver usando ou procurando registrar ou depositar a marca, sabia da existencia e uso continuo em qualquer dos Estados Contractantes da marca sobre a qual se baseia a oposição, e sabia que se achava applicada a productos e mercadorias da mesma classe, o reclamante poderá requerer para si o direito preferencial de usar tal marca no paiz em que se levanta a oposição, ou prioridade para registrar ou depositar-a no referido paiz, com tanto que elle preencha as formalidades exigidas pela legislacao interior de tal paiz e desta Convención.

Artigo 8.

Quando o proprietario de uma marca requerer o registro ou o deposito da marca em um Estado Contractante diverso do de origem da marca, e tal registro ou deposito lhe for negado por causa da existencia de um registro ou deposito previo de uma marca interferente, elle terá o direito de solicitar e obter o cancellation ou revogação do registro ou deposito, caso provar de accordo com os processos legaes do paiz em que procura o cancellation, as estipulações do Paragrapho (a) e as do Paragraphos (b) ou (c) abaixo referidos:

(a) Que elle se achava no goso da protecção legal de sua marca em um dos Estados Contractantes anteriormente à data em que foi pedido o registro ou deposito que elle procura anular; e

(b) que o proprietario da marca interferente cuja cancellation se procura, tinha conhecimento do uso, emprego, registro, ou deposito em qualquer dos Estados Contractantes da marca para os mesmos productos ou mercado-

tueuse est en usage, ou dans le pays où l'enregistrement ou le dépôt en est recherché. Sur la preuve que la personne qui en a fait usage ou qui en recherche l'enregistrement ou le dépôt avait connaissance de l'existence et de l'usage coïstant dans un des États contractants de la marque qui sert de base à l'opposition et pour des marchandises de même espèce, l'opposant pourra réclamer pour lui-même le droit d'user exclusivement et par préférence d'une pareille marque dans le pays où l'opposition est produite ou encore la priorité d'enregistrement ou de dépôt dans le dit pays en se conformant aux prescriptions de la législation nationale de ce pays et à celles de la présente Convention.

Article 8.

Lorsque le propriétaire d'une marque recherche l'enregistrement ou le dépôt de sa marque dans un Etat contractant autre que l'Etat d'origine de la dite marque, et que cet enregistrement ou dépôt lui est refusé parce qu'il y a eu déjà enregistrement ou dépôt d'une marque avec laquelle sa marque fait double emploi, il aura le droit de demander et d'obtenir cancellation ou annulation de la dite marque en faisant la preuve dans les formes de la procédure légale du pays dans lequel la cancellation est poursuivie:

(a) Qu'il jouissait de la protection légale pour sa marque antérieurement à la date de l'enregistrement ou du dépôt de celle dont il poursuit la cancellation; et

(b) Que le propriétaire de la marque dont la cancellation est poursuivie avait connaissance de l'usage, emploi, enregistrement ou dépôt dans l'un quelconque des Etats contractants de la marque sur laquelle se fonde l'action en

los mismos productos o mercancías a que específicamente se aplique, con anterioridad a la adopción y uso o a la presentación de la solicitud de registro o depósito de la marca que se trata de cancelar; o

(c) que el propietario de la marca, que solicite la cancelación basado en un derecho preferente a la propiedad y uso de la misma, haya comerciado y comercie con o en el país en que se solicite la cancelación y que en éste hayan circulado y circulen los productos o mercancías señalados con su marca desde fecha anterior a la presentación de la solicitud de registro o depósito de la marca cuya cancelación se pretende, o de la adopción y uso de la misma.

fering mark is applied, prior to the filing of the application or deposit of the mark which is sought to be cancelled; or

(c) that the owner of the mark who seeks cancellation based on prior right to the ownership and use of such mark, has traded in trades with or in the country in which cancellation is sought, and that goods designated by the mark have circulated and circulate in said country from a date prior to the filing of the application for registration or deposit for the mark, the cancellation which is claimed, or prior to the adoption and use of the same.

Artículo 9.

Cuando la denegación del registro o depósito de una marca se base en un registro previo hecho de acuerdo con esta Convención, el propietario de la marca de que se trate tendrá el derecho de pedir y de obtener la cancelación de la marca previamente registrada o depositada, probando, de acuerdo con los procedimientos legales del país en que trata de obtener el registro o depósito de su marca, que el registrante de la marca que desea cancelar la ha abandonado. El término para declarar abandonada una marca por falta de uso será el que determine la ley nacional, y en su defecto, será de dos años y un día a contar desde la fecha del registro o depósito si la marca no ha sido nunca empleada, o de un año y un día si el abandono o falta de empleo tuvo lugar después de haber sido usada.

Article 9.

When the refusal of registration or deposit of a mark is based on registration previously effected in accordance with this Convention, the owner of the refused mark shall have the right to request and obtain the cancellation of the mark previously registered or deposited, by proving, in accordance with the legal procedure of the country in which he is endeavoring to obtain registration or deposit of his mark, that the registrant of the mark which he desires to cancel, has abandoned it. The period within which a mark may be declared abandoned for lack of use shall be determined by the internal law of each country, and if there is no provision in the internal law, the period shall be two years and one day beginning from the date of registration or deposit if the mark has never been used, or one year and one day if the abandonment or lack of use took place after the mark has been used.

nas aos quaes se acha especificamente applicada a referida marca interferente, anteriormente à adopção e uso da mesma ou anteriormente ao pedido de registo ou deposito da marca que se trata de cancellar; ou

(e) que o proprietario da marca, o qual procura revogação baseada em um direito previo de propriedade e uso da mesma, seja negociado ou negocie com dentro do paiz em que se procura revogação e que produzam ou mercadorias designados com sua marca tenham circulado e circulem no referido paiz a partir de uma data previa à do pedido de registo ou deposito da marca que se trata de revogar, ou previamente à adopção e uso da mesma.

Artigo 9.

Quando a recusa de registo ou deposito de uma marca se basear sobre registo previamente efectuado de acordo com esta Convenção, o dono da marca recusada terá o direito de requerer e obter o cancellamento da marca previamente registrada ou depositada, caso provar, de acordo com o procedimento legal do paiz em que procurar obter registo ou deposito da sua marca, que o registrante da marca que elle procura cancellar abandonou-a. O prazo dentro do qual uma marca poderá ser declarada abandonada por falta de uso será determinado pela lei interna de cada paiz, e se não houver disposição na lei interna, o periodo será de dois anos e um dia a partir da data de registo ou deposito se a marca não tiver nunca sido usada, ou um anno e um dia se o abandono cuja falta de uso teve lugar depois de ter sido usada a marca.

nullité pour des articles ou produits de la même espèce que ceux auxquels la marque incriminée s'applique antérieurement à l'adoption ou l'usage de celle-ci ou antérieurement à la présentation de sa demande pour l'enregistrement ou le dépôt de cette marque incriminée; ou

(c) Que le propriétaire de la marque qui poursuit la cancellation sur la base d'un droit antérieur à l'appropriation et usage de cette marque a commerçé ou commerce avec ou dans le pays dans lequel la cancellation est poursuivie; et que les marchandises désignées par sa marque ont circulé ou circulent dans le dit pays depuis une date antérieure à la présentation de la demande d'application de la marque incriminée et antérieurement à l'adoption et l'usage de celle-ci.

Article 9.

Lorsque le refus d'enregistrement ou de dépôt d'une marque est basé sur un enregistrement déjà effectué conformément à cette Convention, le propriétaire de la marque refusée aura le droit de requérir et d'obtenir la cancellation de la marque déjà enregistrée ou déposée, en prouvant, conformément à la procédure légale du pays dans lequel il s'efforce d'obtenir l'enregistrement ou le dépôt de sa marque, que le titulaire de la marque enregistrée qu'il désire faire canceller l'a abandonnée. Le délai après lequel une marque peut être déclarée abandonnée faute d'usage sera déterminée par la loi nationale de chaque pays, et s'il n'existe aucune disposition dans la loi nationale, cette période sera de deux ans et un jour à partir de la date d'enregistrement ou de dépôt si la marque n'a jamais été utilisée, ou un an et un jour si l'abandon ou le manque d'usage a eu lieu après que la marque a été utilisée.

Artículo 10.

El período de protección otorgado a las marcas registradas o depositadas de acuerdo con los términos de esta Convención, así como sus renovaciones, será el que fijen las leyes del Estado en que se solicite el registro o depósito al tiempo de solicitarse la protección de acuerdo con esta Convención.

Una vez efectuado el registro o depósito de una marca en cada Estado Contratante, existirá independientemente y no será afectado por los cambios que ocurrán en el registro o depósito de dicha marca en otros Estados Contratantes, salvo que otra cosa disponga la legislación interna de cada Estado Contratante.

Artículo 11.

La trasmisión en el país de origen de la propiedad de una marca registrada o depositada, tendrá el mismo valor y será reconocida en los demás Estados Contratantes, siempre que se acompañen pruebas fehacientes de que dicha trasmisión se ha efectuado y registrado de acuerdo con la legislación interna del Estado en que se realizó, y se cumpla además con los requisitos legales del país en que debe tener efecto la trasmisión.

El uso y explotación de las marcas puede cederse o trasladarse separadamente para cada país, y se registrará siempre que se acompañen pruebas fehacientes de que dicha trasmisión se ha efectuado de acuerdo con la legislación interna del Estado en que se realizó, y se cumpla además con los requisitos legales del país en que debe tener efecto la trasmisión.

Article 10.

The period of protection granted to marks registered, deposited or renewed under the Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

Article 11.

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

Artigo 10.

O periodo de protecção outorgado a marcas registradas, depositadas ou renovadas de acordo com esta Convención será o periodo estabelecido pelas leis do Estado de registro, depósito ou renovação, na época em que se efectuar.

Uma vez efectuado o registro ou depósito de uma marca em um Estado Contractante, cada um desses registros ou depósitos existirá independentemente de qualquer outro e não será afectado pelas mudanças que ocorrerem no registro ou depósito de tais marcas em outros Estados Contractantes, salvo outras disposições da legislação interna.

Artigo 11.

A transferencia da posse de uma marca registrada ou depositada no país do seu registro original vigorará e será reconhecida nos outros Estados Contractantes, contanto que sejam fornecidas provas suficientes de que tal transferencia foi executada e registrada de acordo com a lei interna do Estado em que se tenha efectuado a transferencia. Tal transferencia será anotada de acordo com a legislação do paiz em que deverá vigorar.

O uso e a exploração das marcas de fabrica poderão ser transferidas separadamente em cada paiz, e tal transferencia será registrada mediante provas cabares de ter sido tal transferencia executada de acordo com a lei interna do Estado em que se tiver efectuado a transferencia. A referida transferencia será anotada de acordo com a legislação do paiz em que tiver de vigorar.

Article 10.

La durée de protection accordée aux marques enregistrées, déposées ou renouvelées conformément aux termes de cette Convention sera celle fixée par les lois de l'État dans lequel l'enregistrement, le dépôt ou le renouvellement est effectué au moment où il est effectué.

Une fois que l'enregistrement ou le dépôt d'une marque dans un État contractant a été effectué, chacun de ces enregistrements ou dépôts existera indépendamment de tout autre et ne sera aucunement affecté par les changements qui peuvent se produire dans l'enregistrement ou le dépôt de telles marques dans d'autres États contractants, à moins que la loi nationale en dispose autrement.

Article 11.

Le transfert de la propriété d'une marque enregistrée ou déposée dans le pays de son enregistrement original sera effectif et sera reconnu dans les autres Etats contractants pourvu qu'une preuve digne de foi soit produite que le dit transfert a été effectué et enregistré conformément à la loi nationale de l'Etat dans lequel le transfert a eu lieu. Ce transfert sera constaté conformément à la législation du pays dans lequel il doit être effectif.

L'usage et l'exploitation des marques de fabrique peut être transféré séparément pour chaque pays, et le transfert sera enregistré sur la production de la preuve digne de foi que cet enregistrement a bien été effectué conformément à la loi nationale de l'Etat dans lequel il a eu lieu. Ce transfert sera constaté conformément à la législation du pays dans lequel il doit être effectif.

Artículo 12.

Cualquier registro o depósito efectuado en uno de los Estados Contratantes, o cualquiera solicitud de registro o depósito pendiente de resolver, hecha por un agente, representante o cliente del propietario de una marca sobre la que se haya adquirido derecho en otro Estado Contratante por su registro, solicitud previa o uso como tal marca, dará derecho al primitivo propietario a pedir su cancelación o denegación de acuerdo con las estipulaciones de esta Convención y a solicitar y obtener la protección para sí, considerándose que dicha protección se retrotraerá a la fecha de la solicitud cancelada o denegada.

Article 12.

Any registration or deposit which has been effected in one of the Contracting States, or any pending application for registration or deposit, made by an agent, representative or customer of the owner of a mark in which a right has been acquired in another Contracting State through its registration, prior application or use shall give to the original owner the right to demand its cancellation or refusal in accordance with the provisions of this Convention and to request and obtain the protection for himself, it being considered that such protection shall revert to the date of the application of the mark so denied or cancelled.

Artículo 13.

El uso de una marca por su propietario en una forma distinta de la forma en que la marca ha sido registrada en cualquiera de los Estados Contratantes, por lo que respecta a elementos secundarios o no substanciales, no acarreará la nulificación del registro ni afectará la protección de la marca.

En caso de que la forma o los elementos distintivos de la marca sean sustancialmente cambiados, o que sea modificada o aumentada la lista de los productos a que vaya a aplicarse, podrá exigirse al propietario que solicite un nuevo registro, sin perjuicio de la protección de la marca original o de la lista original de los productos.

Los requisitos que las leyes de los Estados Contratantes exijan con respecto a la leyenda que indica la autorización del uso de las marcas, se considerarán satisfechos por lo que toca a los

Article 13.

The use of a trade mark by its owner in a form different in minor or non-substantial elements from the form in which the mark has been registered in any of the Contracting States, shall not entail forfeiture of the registration or impair the protection of the mark.

In case the form or distinctive elements of the mark are substantially changed, or the list of goods to which it is to be applied is modified or increased, the proprietor of the mark may be required to apply for a new registration, without prejudice to the protection of the original mark or in respect to the original list of goods.

The requirements of the laws of the Contracting States with respect to the legend which indicates the authority for the use of trade marks, shall be deemed fulfilled in respect to goods

Artigo 12.

Qualquer registro ou depósito que se tenha efectuado em um dos Estados Contractantes, ou qualquer pedido de registro ou depósito pendente, feito por um agente, representante ou freguez do dono de uma marca sobre a qual tenha sido adquirido um direito previo em outros Estados Contractantes mediante registro, pedido ou uso previo, dará ao dono original o direito de requerer a sua revogação ou denegação de acordo com as disposições desta Convenção e requerer e obter protecção para, considerando-se que tal protecção reverterá à data do pedido da marca denegada ou cancellada.

Artigo 13.

O uso de uma marca pela seu dono em uma forma que apresente diferenças nos elementos secundários ou não essenciais da forma em que a marca tenha sido registrada em qualquer dos Estados Contractantes, não prejudicará o registo nem afectará a protecção da marca.

Caso a forma ou os elementos distintivos sejam substancialmente alterados, ou a lista de mercadorias aos quaes se aplicar se modificada ou aumentada, o proprietário da marca poderá ser obrigado a requerer novo registo, sem prejuízo da marca original ou no que respeita à lista original de mercadorias.

As exigencias das leis dos Estados Contractantes relativas aos efeitos que indicam a autoridade para o uso de marcas de fabrica, serão consideradas satisfeitas com respeito a mercadorias de origem

Article 12.

Tout enregistrement ou dépôt qui a été effectué dans l'un des Etats contractants, ou toute demande pendante d'enregistrement ou de dépôt faite par un agent, représentant ou client du propriétaire d'une marque qui a acquis droit de protection dans un autre Etat contractant par l'enregistrement, demande d'enregistrement ou usage antérieur, donnera à ce propriétaire le droit de demander cancellation ou refus de la marque ainsi présentée conformément aux dispositions de cette Convention, ainsi que de demander et d'obtenir la protection pour lui-même; cette protection étant considérée comme reportée rétroactivement à la date de la demande ainsi rejetée ou cancellée.

Article 13.

L'usage d'une marque de fabrique par son propriétaire sous une forme comportant des variantes d'éléments secondaires ou non substantiels de la forme sous laquelle elle a été enregistrée, n'entraînera pas l'annulation de l'enregistrement ni n'affectera pas la protection de la marque.

Au cas où la forme ou éléments distinctifs de la marque sont substantiellement changés, ou que la liste des marchandises auxquelles elle doit s'appliquer est modifiée ou augmentée, le propriétaire de la marque peut être invité à faire une demande pour un nouvel enregistrement, sans préjudice de la protection de la marque originale, ou quant à la liste original de produits.

Les prescriptions établies par la loi des Etats contractants quant à la formule qui indique le droit à l'usage des marques de fabrique seront considérées comme remplies en ce qui concerne les mar-

productos de origen extranjero, si dichas marcas llevan las palabras o indicaciones autorizadas legalmente en el país de origen de los productos.

CAPÍTULO III. DE LA PROTECCIÓN DEL NOMBRE COMERCIAL

Artículo 14.

El nombre comercial de las personas naturales o jurídicas domiciliadas o establecidas en cualquiera de los Estados Contratantes será protegido en todos los demás sin necesidad de registro o depósito, forme o no parte de una marca.

Artículo 15.

Se entenderá por nombre comercial el propio nombre y apellidos que el fabricante, industrial, comerciante o agricultor particular use en su negocio para darse a conocer como tal, así como la razón social, denominación o título adoptado y usado legalmente por las sociedades, corporaciones, compañías o entidades fabriles, industriales, comerciales o agrícolas, de acuerdo con las disposiciones de sus respectivas leyes nacionales.

Artículo 16.

La protección que esta Convención otorga a los nombres comerciales consistirá:

(a) en la prohibición de usar o adoptar un nombre comercial idéntico o engañosamente semejante al legalmente adoptado y usado por otro fabricante, industrial, comerciante o agricultor dedicado al propio giro en cualquiera de los Estados Contratantes; y

foreign origin if such marks carry the words or indications legally used or required to be used in the country of origin of the goods.

CHAPTER III. PROTECTION OF COMMERCIAL NAMES

Article 14.

Trade names or commercial names of persons entitled to the benefits of this Convention shall be protected in all the Contracting States. Such protection shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade mark.

Article 15.

The names of an individual, surnames and trade names used by manufacturers, industrialists, merchants or agriculturists to denote their trade or calling, as well as the firm's name, the name or title legally adopted and used by associations, corporations, companies or manufacturing, industrial, commercial or agricultural entities, in accordance with the provisions of the respective national laws, shall be understood to be commercial names.

Article 16.

The protection which this Convention affords to commercial names shall be:

(a) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

estrangeira, desde que tais marcas tragam as palavras ou as indicações legalmente usados ou seu uso seja exigido no país de origem das mercadorias.

CAPITULO III.

PROTECCÃO DE NOMES COMMERCIAIS.

Artigo 14.

Os nomes comerciais com direito aos benefícios desta Convenção serão protegidos em todos os Estados Contractantes. Gozará desta protecção sem necessidade de depósito ou registro, quer o nome faça parte de uma marca de fabrica quer não.

Artigo 15.

Os nomes de um individuo, sobrenomes e nomes comerciais usados por fabricantes, indústrias, negociantes ou agricultores para indicar o seu negocio ou ofício, assim como o nome da firma, o nome ou título legalmente adoptado e usado por associações, corporações, companhias ou entidades fabris, indústrias, commerciaes ou agrícolas de acordo com as disposições das respectivas leis nacionaes, serão considerados como sendo nomes commerciaes.

Artigo 16.

A protecção que esta Convenção outorga aos nomes comerciaes será:

(a) prohibir o uso ou adopção de um nome commercial identico ou enganosamente semelhante ao legalmente adoptado e previamente usado por outrem ocupado no mesmo negocio em qualquer dos Estados Contractantes; e

chandises d'origine étrangère si ces marques portent les mots ou indications légalement employés ou exigés dans le pays d'origine de ces marchandises.

CHAPITRE III.

PROTECTION DU NOM COMMERCIAL

Article 14.

Le nom commercial de personnes ou de sociétés civiles établies ou domiciliées dans l'un quelconque des Etats contractants sera protégé dans tous les autres sans qu'il soit besoin d'enregistrement ou de dépôt, que ce nom commercial forme partie ou non de la marque de fabrique.

Article 15.

Les noms d'un individu, noms de famille et raison sociale employés par les fabricants, industriels, commerçants ou agriculteurs pour désigner leur commerce ou leur industrie, aussi bien que le nom de leur firms, le nom ou titre légalement adopté et utilisé par les associations, corporations, compagnies ou sociétés civiles ou manufacturières, industrielles, commerciales ou agricoles, conformes aux dispositions des lois nationales respectives, seront considérés comme nom commercial.

Article 16.

La protection que la présente Convention accorde au nom commercial consistera:

(a) dans la prohibition de faire usage ou d'adopter un nom commercial identique ou d'une similitude pouvant prêter à confusion avec celle adoptée et antérieurement employée par quelqu'un d'autre engagé dans le même genre d'affaires dans l'un quelconque des Etats contractants; et

(b) en la prohibición de usar, registrar o depositar una marca cuyo elemento distintivo principal esté formado por todo o parte esencial del nombre comercial legal y anteriormente adoptado y usado por otra persona natural o jurídica domiciliada o establecida en cualquiera de los Estados Contratantes y dedicada a la fabricación o comercio de productos o mercancías de la propia clase a que se destine la marca.

(b) to prohibit the use, registration or filing of a trade mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States, engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade mark is intended.

Artículo 17.

Todo fabricante, industrial, comerciante o agricultor domiciliado o establecido en cualquiera de los Estados Contratantes podrá oponerse dentro de los términos y por los procedimientos legales del país de que se trate, a la adopción, uso, registro o depósito de una marca destinada a productos o mercancías de la misma clase que constituya su giro o explotación, cuando estime que el o los elementos distintivos de tal marca puedan producir en el consumidor error o confusión con su nombre comercial, legal y anteriormente adoptado y usado.

Article 17.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States, may, in accordance with the law and the legal procedure of such countries, oppose the adoption, use, registration or deposit of a trade mark for products or merchandise of the same class as those sold under his commercial name, when he believes that such trade mark or the inclusion in it of the trade or commercial name or a simulation thereof may lead to error or confusion in the mind of the consumer with respect to such commercial name legally adopted and previously in use.

Artículo 18.

Todo fabricante, industrial, comerciante o agricultor domiciliado o establecido en cualquiera de los Estados Contratantes podrá solicitar y obtener de acuerdo con las disposiciones y preceptos legales del país respectivo, la prohibición de usar, o la cancelación del registro o depósito de cualquier nombre comercial o marca destinados a la fabricación, comercio o producción de artículos o mercancías de la misma clase en que él trafica, probando:

Article 18.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States may, in accordance with the law and procedure of the country where the proceeding is brought, apply for and obtain an injunction against the use of any commercial name or the cancellation of the registration or deposit of any trade mark, when such name or mark is intended for use in the manufacture, sale or production of articles or merchandise of the same class, by proving:

(b) prohibir o uso, registro ou depósito de uma marca de fabrica cujos elementos distintivos sejam formados, no todo ou em sua parte essencial, de um nome legalmente adoptado e previamente usado por outro proprietário domiciliado ou estabelecido em qualquer dos Estados Contractantes, ocupado na fabricação, venda ou produção de productos ou mercadorias da mesma classe que aquelles aos quaes se destina a marca.

Artigo 17.

Qualquer fabricante, industrial, negociante ou agricultor domiciliado ou estabelecido em qualquer dos Estados Contractantes, poderá de acordo com a lei e o procedimento legal de tales paizes, oponer à adopção, uso, registro ou depósito de uma marca para productos ou mercadorias da mesma classe que as vendidas sob o seu nome commercial, quando julgar que tal marca ou a incluir-se nella de um nome commercial ou simulação do mesmo, possa conduzir a erro ou confusão no espírito do consumidor relativamente ao referido nome legalmente adoptado e previamente usado.

Artigo 18.

Qualquer fabricante, industrial, negociante ou agricultor, domiciliado ou estabelecido em qualquer dos Estados Contractantes, poderá, de acordo com a lei e as praxes do paiz em que correr o procedimento, pedir e obter ordem contra o uso de qualquer nome ou o cancellamento do registro ou depósito de qualquer marca, quando tal marca ou nome for destinado a ser empregado na fabricação, venda ou produção de artigos ou mercaderias da mesma classe, contanto que prove:

(b) dans la prohibition de l'usage, de l'enregistrement ou du dépôt d'une marque de fabrique dont les éléments distinctifs reproduisent tout, ou partie essentielle, d'un nom commercial légalement adopté et précédemment employé par un autre propriétaire domicilié ou établi dans l'un quelconque des États contractants, engagé dans la manufacture, la vente ou la production de produits ou marchandises du même genre que ceux auxquels la marque de fabrique est destinée.

Article 17.

Tout fabricant, industriel, commerçant ou agriculteur domicilié ou établi dans l'un quelconque des États contractants peut, en se conformant à la loi et à la procédure de ces pays, faire opposition à l'adoption, l'usage, l'enregistrement ou le dépôt d'une marque de fabrique pour des produits ou marchandises de la même espèce que celles qui se vendent sous son nom commercial, lorsqu'il estime les éléments distinctifs d'une telle marque peuvent produire chez le consommateur erreur ou confusion avec tel nom commercial légalement acquis et antérieurement employé.

Article 18.

Tout manufacturier, industriel, commerçant, ou agriculteur domicilié ou établi dans l'un quelconque des États contractants peut demander et obtenir conformément aux dispositions légales du pays intéressé, la prohibition de l'usage ou la cancellation de l'enregistrement ou dépôt de tout nom commercial ou marque de fabrique lorsque ce nom ou cette marque est destinée à l'usage de la manufacture, pour la vente ou la production d'articles ou de marchandises de la même espèce, en prouvant:

(a) que el nombre comercial o marca cuya cancelación pretende es sustancialmente idéntico o engañosamente semejante a su propio nombre comercial legalmente adoptado y usado con anterioridad en cualquiera de los Estados Contratantes para la fabricación o comercio de productos o mercancías de la misma clase, y

(b) que con anterioridad a la adopción y uso del nombre comercial, o a la adopción y uso o solicitud de registro o depósito de la marca cuya cancelación pretende, empleó y que continúa empleando en la fabricación o comercio de los mismos productos o mercancías su propio nombre comercial, legal y anteriormente adoptado y usado en cualquiera de los Estados Contratantes, en o dentro del Estado en que solicite la cancelación.

Artículo 19.

La protección del nombre comercial se impartirá de acuerdo con la legislación interna y las estipulaciones de esta Convención, de oficio, cuando las autoridades gubernativas o administrativas competentes tengan conocimiento o pruebas ciertas de su existencia y uso legal, o a petición de parte interesada en los casos comprendidos en los artículos anteriores.

CAPÍTULO IV.

DE LA REPRESIÓN DE LA COMPETENCIA DESLEAL

Artículo 20.

Todo acto o hecho contrario a la buena fe comercial o al normal y honrado desenvolvimiento de las actividades industriales o mercantiles será considerado como

(a) that the commercial name or trade mark, the enjoining or cancellation of which is desired, is identical with or deceptively similar to his commercial name already legally adopted and previously used in any of the Contracting States, in the manufacture, sale or production of articles of the same class, and

(b) that prior to the adoption and use of the commercial name, or to the adoption and use or application for registration or deposit of the trade mark, the cancellation of which is sought, or the use of which is sought to be enjoined, he used and continues to use for the manufacture, sale or production of the same products or merchandise his commercial name adopted and previously used in any of the Contracting States or in the State in which cancellation or injunction is sought.

Article 19.

The protection of commercial names shall be given in accordance with the internal legislation and by the terms of this Convention, and in all cases where the internal legislation permits, by the competent governmental or administrative authorities whenever they have knowledge or reliable proof of their legal existence and use, or otherwise upon the motion of any interested party.

CHAPTER IV.

REPRESSION OF UNFAIR COMPETITION.

Article 20.

Every act or deed contrary to commercial good faith or to the normal and honorable development of industrial or business activities shall be considered as

(a) que o nome commercial ou marca de fabrica, cuja prohibição ou cancellamento se requer, é identico ou enganosamente semelhante ao seu nome commercial já legalmente adoptado e previamente usado em qualquer dos Estados Contractantes, na fabricação, venda, ou produção de artigos da mesma classe, e

(b) que anteriormente à adopção e uso do nome commercial ou à adopção e uso ou pedido de registro da marca de fabrica, cujo cancellamento se requer, ou cujo uso se trata de prohibir, elle usava e continua a usar para o fabrico, venda ou produção dos mesmos productos ou mercadorias o seu nome commercial adoptado e previamente usado em qualquer dos Estados Contractantes ou no Estado em que se requer cancellamento ou prohibição.

Artigo 19.

A protecção de nomes comerciais será outorgada de acordo com a legislação interna e os termos desta Convenção, e em todos os casos em que o permitir a legislação interna, pelas competentes autoridades governamentais ou administrativas, sempre que possuirem conhecimento ou provas cabecas da sua existencia e uso illegal ou então a pedido de qualquer parte interessada.

CAPITULO IV.

REPRESSÃO DA CONCURRENCIA DESLEAL.

Artigo 20.

Toda a acção ou acto contrario à boa fé ou ao desenvolvimento normal e honesto das actividades industriais ou comerciales, será considerado como sendo concur-

(a) que le nom commercial ou la marque de fabrique dont la cancellation est poursuivie est identique ou d'une similitude pouvant prêter à confusion avec son nom commercial déjà légalement adopté et antérieurement employé dans l'un quelconque des Etats contractants, dans la manufacture, la vente ou la production d'articles de même espèce, et

(b) qu'antérieurement à l'adoption et à l'usage du nom commercial, ou à l'adoption et à l'usage ou à la demande d'enregistrement ou de dépôt de la marque de fabrique dont la cancellation est poursuivie, il faisait usage et continue à faire usage pour la manufacture, la vente ou la production des mêmes articles ou marchandises de son nom commercial adopté et antérieurement employé dans l'un quelconque des Etats contractants ou dans l'Etat dans lequel cette cancellation est poursuivie.

Article 19.

La protection du nom commercial sera accordée conformément à la législation nationale et aux termes de la présente Convention, et dans tous les cas où la législation nationale le permet, soit par les autorités gouvernementales ou administratives compétentes, toutes les fois qu'elles auront connaissance ou acquis la preuve fondée de son existence et usage légal, soit à la requête de toute partie intéressée.

CHAPITRE IV.

RÉPRESSION DE LA CONCURRENCE DÉLOYALE.

Article 20.

Tout acte ou fait contraire à la bonne foi commerciale ou au développement normal et honorable d'activités industrielles ou commerciales sera considéré comme

de competencia desleal y, por tanto, injusto y prohibido.

Artículo 21.

Se declaran de competencia desleal los siguientes actos, y al no estar señaladas sus penas en la legislación interna de cada Estado Contratante, se reprimirán de acuerdo con las prescripciones de esta Convención:

(a) Los actos que tengan por objeto dar a entender, directa o indirectamente, que los artículos o actividades mercantiles de un fabricante, industrial, comerciante o agricultor pertenecen o corresponden a otro fabricante, industrial, comerciante o agricultor de alguno de los otros Estados Contratantes, ya sea apropiándose o simulando marcas, símbolos, nombres distintivos, imitando etiquetas, envases, recipientes, nombres comerciales u otros medios usuales de identificación en el comercio.

(b) Las falsas descripciones de los artículos, usando palabras, símbolos y otros medios que tiendan a engañar al público en el país donde estos actos ocurran, con respecto a la naturaleza, calidad o utilidad de las mercancías.

(c) Las falsas indicaciones de origen o procedencia geográficos de los artículos, por medio de palabras, símbolos, o de otra manera, que tiendan a engañar en ese respecto al público del país donde estos hechos ocurran.

(d) Lanzar al mercado u ofrecer o presentar en venta al público un artículo, producto o mercancía bajo forma o aspecto tales que aun cuando no contenga directa ni indirectamente indicación de origen o procedencia geográficos determinados, dé o produzca la impresión, ya por los dibujos, elementos ornamentales o idioma empleado en

unfair competition and, therefore, unjust and prohibited.

Article 21.

The following are declared to be acts of unfair competition and unless otherwise effectively dealt with under the domestic laws of the Contracting States shall be repressed under the provisions of this Convention:

(a) Acts calculated directly or indirectly to represent that the goods or business of a manufacturer, industrialist, merchant or agriculturist are the goods or business of another manufacturer, industrialist, merchant or agriculturist of any of the other Contracting States, whether such representation be made by the appropriation or simulation of trade marks, symbols, distinctive names, the imitation of labels, wrappers, containers, commercial names, or other means of identification;

(b) The use of false descriptions of goods, by words, symbols or other means tending to deceive the public in the country where the acts occur, with respect to the nature, quality, or utility of the goods;

(c) The use of false indications of geographical origin or source of goods, by words, symbols, or other means which tend in that respect to deceive the public in the country in which these acts occur;

(d) To sell, or offer for sale to the public an article, product or merchandise of such form or appearance that even though it does not bear directly or indirectly an indication of origin or source, gives or produces, either by pictures, ornaments, or language employed in the text, the impression of being a "product, article or commodity originating

rencia desleal e, portanto, injusto e prohibido.

Artigo 21.

Os seguintes actos são declarados actos de concurrence desleal, e, a não ser que para os mesmos haja legislação efectiva em outras categorias de leis internas dos países contractantes, serão reprimidos de acordo com as disposições desta Convenção.

(a) Os actos destinados directa ou indirectamente a representar as mercaderias ou o negocio de um fabricante, industrial, negociante ou agricultor como sendo mercadorias ou negocio de outro fabricante, industrial, negociante ou agricultor de um dos outros Estados Contractantes, quer tal representação se effectue pela apropriação ou simulação de marcas de fabrica, symbolos, nomes distintivos, a imitação de rotulos, envolucros, envolutorios, nomes commerciaes, quer por outros meios de identificação;

(b) O emprego de falsas descripções de mercadorias, por meio de palavras, symbolos e outros meios tendentes a enganar o publico no paiz em que se dão tales actos, com respeito á natureza, qualidade, ou utilidade das mercadorias;

(c) O uso de falsas indicações da origem ou procedencia geographica das mercadorias, por meio de palavras ou outros symbolos que tendam neste sentido a enganar o publico no paiz em que tales actos se dão;

(d) Vender, ou oferecer a venda ao publico um artigo, producto ou mercadoria de tal forma ou apparença que, embora não traga uma indicação directa ou indirecta de origem, ou procedencia, dé ou produza per meio de estampas, ornamentos, ou linguagem empregada no texto, a impressão de ser um producto, artigo ou mercadoria originado, fabricado

concurrence déloyale et, par suite, comme injuste et prohibé.

Article 21.

Les actes ci-dessous sont déclarés actes de concurrence déloyale et, à moins que la loi nationale des États contractants n'en traite ailleurs, ils seront réprimés conformément aux dispositions de la présente Convention:

(a) Les actes qui tendent à présenter directement ou indirectement les marchandises ou affaires d'un fabricant, d'un commerçant ou d'un agriculteur comme marchandises ou affaires d'un autre fabricant, commerçant ou agriculteur de l'un des États contractants, soit par l'appropriation ou la contrefaçon de marques de fabrique, de symboles, de dénominations distinctives, soit par l'imitation d'étiquettes, d'emballages, de dénominations commerciales ou d'autres moyens d'identification;

(b) L'emploi de fausses descriptions de marchandises, l'emploi de mots, symboles et autres moyens qui tendent à tromper le public dans le pays où ces actes ont lieu relativement à la nature, la qualité ou l'utilité des marchandises;

(c) L'emploi de fausses indications d'origine ou de provenance géographique des marchandises, à l'aide de mots ou autres symboles ou moyens qui tendent à cet égard à tromper le public du pays dans lequel ces faits se produisent;

(d) La vente ou la mise en vente publique d'un article, produit ou marchandise d'une telle forme ou apparence que, bien qu'il ne porte pas directement ou indirectement une indication d'origine, ou de provenance déterminé, donne ou laisse l'impression, soit par les gravures, les motifs d'ornementation ou le langage employé dans le texte, d'être un

el texto, de ser un producto, artículo o mercancía originado, manufacturado o producido en otro de los Estados Contratantes.

(e) Cualesquiera otros hechos o actos contrarios a la buena fé en materias industriales, comerciales o agrícolas que, por su naturaleza o finalidad, puedan considerarse análogos o asimilables a los anteriormente mencionados.

Artículo 22.

Los Estados Contratantes que aún no hayan legislado sobre los actos de competencia desleal mencionados en este capítulo, aplicarán a ellos las sanciones contenidas en su legislación sobre marcas, o en cualesquiera otras leyes, y ordenarán la suspensión de dichos actos a petición de las personas perjudicadas, ante las cuales los causantes serán también responsables por los daños y perjuicios que les hayan ocasionado.

manufactured or produced in one of the other Contracting States;

(e) Any other act or deed contrary to good faith in industrial, commercial or agricultural matters which, because of its nature or purpose, may be considered analogous or similar to those above mentioned.

Article 22.

The Contracting States which may not yet have enacted legislation repressing the acts of unfair competition mentioned in this chapter, shall apply to such acts the penalties contained in their legislation on trade marks or in any other statutes, and shall grant relief by way of injunction against the continuance of said acts at the request of any party injured; those causing such injury shall also be answerable in damages to the injured party.

CAPÍTULO V.

DE LA REPRESIÓN DE LAS FALSAS INDICACIONES DE ORIGEN Y PROCEDENCIA GEOGRÁFICOS

Artículo 23.

Será considerada falsa e ilegal, y por tanto prohibida, toda indicación de origen o procedencia que no corresponda realmente al lugar en que el artículo, producto o mercancía fué fabricado, manufacturado o recolectado.

CHAPTER V.

REPRESSION OF FALSE INDICATIONS OF GEOGRAPHICAL ORIGIN OR SOURCE.

Article 23.

Every indication of geographical origin or source which does not actually correspond to the place in which the article, product or merchandise was fabricated, manufactured, produced or harvested, shall be considered fraudulent and illegal, and therefore prohibited.

Artículo 24.

A los efectos de esta Convención se considerará como indicación de origen o procedencia geográficos, consignar o hacer aparecer en alguna marca, etiqueta, cubierta, envase, envoltura, prescinta, de

Article 24.

For the purposes of this Convention the place of geographical origin or source shall be considered as indicated when the geographical name of a definite locality, region, country or nation,

ou produzido em uma das Nações Contractantes;

(c) Qualquer outra accão ou acto contrario à boa fé em matérias industriaes, commerciaes e agrícolas que, por causa de sua natureza ou fim, possa ser considerado como sendo analogo ou semelhante aos acima mencionados.

Artigo 22.

Os Estados Contractantes que não tenham ainda decretado legislação sobre os actos de concorrência desleal mencionados neste artigo applicarão a taes actos as penas contidas na sua legislação sobre marcas de fabrica, ou em quaequer outras leis e ordenarão a cessação dos referidos actos a pedido de qualquer parte prejudicada, que terá o direito de exigir das partes culpadas indemnização pelos danos soffridos.

CAPITULO V.

REPRESSÃO DE FALSAS INDICAÇÕES DE ORIGEM OU PROCEDENCIA GEOGRAPHICA.

Artigo 23.

Toda a indicação de origem ou procedencia geographica que não corresponder de facto ao logar em que o artigo, producto ou mercadoria foi fabricado, manufacturado, produzido ou colhido, será considerada fraudulenta e illegal, e, portanto, proibida.

Artigo 24.

Para os fins desta Convenção, o logar de origem ou procedencia geographica será considerado como sendo indicado quando o nome geographico de uma determinada localidade, região, con-

produit, article ou marchandise, fabriqué ou produit dans l'un des Etats contractants, ou qui en soit originaire.

(c) Tout autre fait ou acte contraire à la bonne foi en matière industrielle, commerciale ou agricole qui, par sa nature ou son objet peut être considéré comme analogue ou assimilable à ceux ci-dessus mentionnés.

Article 22.

Les États contractants qui n'auraient encore établi aucune législation pour la répression des actes de concurrence déloyale mentionnés dans ce chapitre appliqueront à ces actes les sanctions prévues dans leur législation sur les marques de fabrique ou par toute autre loi, et ordonneront la cessation de ces actes sur requête des parties lésées. L'auteur du préjudice causé sera également passible d'une condamnation en dommages intérêts pour les torts occasionnés.

CAPITRE V.

RÉPRESSION DE FAUSSES INDICATIONS D'ORIGINE ET DE PROVENANCE GÉOGRAPHIQUE.

Article 23.

Toute indication d'origine ou provenance qui ne correspond pas exactement au lieu où l'article, le produit, ou la marchandise a été fabriqué, obtenu ou récolté sera considérée comme frauduleuse et illégale, et par conséquent prohibée.

Article 24.

Dans l'intention de cette Convention le lieu d'origine ou de provenance sera considéré comme indiqué lorsque le nom géographique d'une localité, d'une région, d'un pays ou d'une nation détermi-

cualquier artículo, producto o mercancía, o directamente sobre el mismo, el nombre geográfico de una localidad, región, país o nación determinada, bien sea de modo expreso y directo, o indirectamente, siempre que dicho nombre geográfico sirva de base o raíz a las frases, palabras o expresiones que se empleen.

Artículo 25.

Los nombres geográficos que indiquen origen o procedencia no son susceptibles de apropiación individual, pudiendo usarse libremente para indicar el origen o procedencia de los productos o mercancías o su propio domicilio comercial, cualquier fabricante, industrial, comerciante o agricultor establecido en el lugar indicado o que comercie con los productos que se originen en éste.

Artículo 26.

La indicación de origen o procedencia geográficos, fijada o estampada sobre un producto o mercancía, deberá corresponder exactamente al lugar en que dicho producto o mercancía ha sido fabricado, manufacturado o recolectado.

Artículo 27.

Quedan exceptuadas de las disposiciones contenidas en los anteriores artículos aquellas denominaciones, frases o palabras que, constituyendo en todo o en parte términos geográficos, hayan pasado, por los usos constantes, universales y honrados del comercio, a formar el nombre o designación propias del artículo, producto o mercancía a que se apliquen, no estando comprendidas, sin embargo, en esta excepción las indicaciones regionales de origen de

either expressly and directly, or indirectly, appears on any trade mark, label, cover, packing or wrapping, of any article, product or merchandise, directly or indirectly thereon, provided that said geographical name serves as a basis for or is the dominant element of the sentences, words or expressions used.

Article 25.

Geographical names indicating geographical origin or source are not susceptible of individual appropriation, and may be freely used to indicate the origin or source of the products or merchandise or his commercial domicile, by any manufacturer, industrialist, merchant or agriculturist established in the place indicated or dealing in the products there originating.

Article 26.

The indication of the place of geographical origin or source, affixed to or stamped upon the product or merchandise, must correspond exactly to the place in which the product or merchandise has been fabricated, manufactured or harvested.

Article 27.

Names, phrases or words, constituting in whole or in part geographical terms which through constant, general and reputable use in commerce have come to form the name or designation itself of the article, product or merchandise to which they are applied, are exempt from the provisions of the preceding articles; this exception, however, does not include regional indications of origin of industrial or agricultural products the quality and reputa-

dado ou nação, quer expressamente e directamente, quer indirectamente, aparecer sobre qualquer marca de fabrica, rotulo, coberta, acondicionamento ou envolucro, de qualquer artigo produto ou mercadoria, directa ou indirectamente sobre a mesma, com tanto que tal nome geographicó sirva como base ou motivo dominante das phrases, palavras ou expressões empregadas.

Artigo 25.

Os nomes geographicos indicativos de origem ou procedencia geographicá não são susceptiveis de apropriação individual, e podem ser livremente usados pelo fabricante, industrial, negociante ou agricultor estabelecido no logar indicado ou negociando com productos que ahi se originem para indicar a origem de productos ou mercadorias ou o seu domicilio.

Artigo 26.

A indicação do logar de origem, ou procedencia geographicá, appensada ou carimbada sobre o artigo, producto ou mercadoria deve corresponder exactamente ao logar em que o referido artigo ou mercadoria tenha sido fabricado, manufacturado ou colhido.

Artigo 27.

Os nomes, phrases ou palavras, que constituam no todo ou em parte termos geographicos, que, mediante uso constante, universal, e honroso no commercio tetham chegado a formar o nome a propria designação do artigo, producto ou mercadoria ao qual applicam, são isentos das disposições contidas nos artigos anteriores; esta excepção, entretanto, não inclue indicações regionaes de origem de productos industriais ou agrícolas cuja qualidade e re-

minée figure soit expressément et directement soit indirectement sur toute marque de fabrique, l'étiquette, couvercle, empaquetage, enveloppe, etc., de tout article, produit, ou de toute marchandise,—ou directement sur ceux-ci, pourvu que les dits noms géographiques servent de base ou d'élément dominant aux phrases, mots ou expressions employés.

Article 25.

Les noms géographiques indiquant l'origine ou la provenance géographique ne sont pas susceptibles d'appropriation individuelle; et peuvent être employés librement pour indiquer l'origine ou la provenance des produits ou marchandises, ou le domicile commercial de tout fabricant, industriel, commerçant ou agriculteur établi sur le lieu indiqué ou trafiquant de produits qui en sont originaires.

Article 26.

L'indication du lieu d'origine ou de provenance géographique attachée ou apposée sur l'article, produit ou marchandise doit correspondre exactement au lieu dans lequel le dit article ou marchandise a été fabriqué, manufacturé ou récolté.

Article 27.

Les noms, phrases ou mots constituant en tout ou en partie des termes géographiques qui par suite d'un usage constant général et connu qui en est fait dans le commerce en sont venus à constituer le nom ou la désignation même de l'article, produit ou marchandise auquel ils sont appliqués sont exempts des dispositions des articles précédents; cette exception toutefois n'inclut pas les indications de régions d'origine de produits industriels ou agri-

productos industriales o agrícolas cuya calidad y aprecio por parte del público consumidor dependa del lugar de producción u origen.

Artículo 28.

A falta de disposiciones especiales que repriman las falsas indicaciones de origen o procedencia geográficos, se aplicarán a este fin las respectivas leyes sanitarias o las referentes a la protección marcaria en los Estados Contratantes.

CAPÍTULO VI.

DE LAS SANCIONES

Artículo 29.

Queda prohibido manufacturar, exportar, importar, distribuir, o vender artículos o productos que infrinjan directa o indirectamente alguna de las modalidades señaladas en esta Convención para la protección marcaria, la protección y defensa del nombre comercial, la represión de la competencia desleal, y la represión de las falsas indicaciones de origen o procedencia geográficos.

Artículo 30.

Cualquier acto de los prohibidos por esta Convención será reprimido por las autoridades gubernativas, administrativas o judiciales competentes del Estado en que se cometía, por los medios y procedimientos legales que en dicho país rijan, ya de oficio, ya a petición de parte interesada, la que podrá ejercitarse las acciones y derechos que las leyes le concedan para ser indemnizada de los daños y perjuicios recibidos, pudiendo ser decomisados, destruidos o inutilizados, según el caso,

tion of which to the consuming public depend on the place of production or origin.

Article 28.

In the absence of any special remedies insuring the repression of false indications of geographical origin or source, remedies provided by the domestic sanitary laws, laws dealing with misbranding and the laws relating to trade marks or trade names, shall be applicable in the Contracting States.

CHAPTER VI.

REMEDIES.

Article 29.

The manufacture, exportation, importation, distribution, or sale is forbidden of articles or products which directly or indirectly infringe any of the provisions of this Convention with respect to trademark protection; protection and safeguard of commercial names; repression of unfair competition; and repression of false indications of geographical origin or source.

Article 30.

Any act prohibited by this Convention will be repressed by the competent administrative or judicial authorities of the government of the state in which the offense was committed, by the legal methods and procedure existing in said country, either by official action, or at the request of interested parties, who may avail themselves of the rights and remedies afforded by the law to secure indemnification for damage and loss suffered; the articles, products or merchandise

putação não dependam para o consumidor do logar de producção ou origem.

Artigo 28.

Na ausencia de quaesquer recursos especiaes que assegurem a repressão de falsas indicações de origem ou procedencia geographica, serão applicaveis nos Estados contractantes os recursos providos pelas leis sanitarias, as leis que tratem da marcação erronea e as leis relativas a marcas de fabrica ou nomes commerciaes.

CAPITULO VI.

RECURSOS.

Artigo 29.

E prohibida a fabricação, exportação, importação, distribuição, ou venda dos artigos ou productos que directa ou indirectamente infrinjam qualquer das provisões desta Convenção no respeito á protecção de marcas de fabrica, protecção e salvaguarda de nomes commerciaes, repressão de concurrence desleal, e repressão de falsas indicações de origem ou procedencia geographica.

Artigo 30.

Qualquer acto prohibido por esta Convenção será reprimido pelas competentes autoridades judiciaes do governo do paiz em que tenha sido cometida a offensa, pelos methodos e processos legaes existentes no referido paiz, quer mediante actuação oficial quer a pedido das partes interessadas, que poderão se valer dos direitos e dos recursos proporcionados pelas leis, com o fim de obter indemnização pelo damno ou perda soffridos; os artigos, productos ou mercadorias ou as

coles, dont la qualité et la valeur dépendent, aux yeux du public consommateur, du lieu de production ou d'origine.

Article 28.

Faute de dispositions spéciales qui assurent la répression de fausses indications d'origine ou de provenance géographique, les sanctions prévues par les lois sanitaires nationales ou les lois relatives aux marques de fabrique ou au nom commercial seront applicables dans les États contractants.

CAPITRE VI.

SANCTIONS.

Article 29.

Est prohibée — la fabrication, l'exportation, l'importation, la distribution, ou la vente d'articles ou produits qui, directement ou indirectement, enfreignent l'une des dispositions de cette Convention en ce qui concerne la protection des marques de fabrique, la protection et la sauvegarde du nom commercial, la répression de la concurrence déloyale et la répression des fausses indications d'origine, ou de provenance géographique.

Article 30.

Tout acte prohibé par la présente Convention sera réprimé par les autorités administratives ou judiciaires compétentes de l'État dans lequel le délit fut commis, suivant les méthodes et la procédure légales en vigueur dans ce pays, soit d'office, soit à la requête des parties intéressées qui peuvent se prévaloir des droits et recours que les lois leur accordent pour obtenir indemnisation pour les dommages et pertes subis. Les articles, produits, marchandises où leur mar-

los artículos, productos o mercancías, o sus distintivos, que hayan sido objeto del acto de competencia desleal.

Artículo 31.

Cualquier fabricante, industrial, comerciante o agricultor interesado en la producción, fabricación o comercio de las mercancías o artículos afectados por el acto o hecho prohibido, así como sus agentes, representantes o apoderados en cualquiera de los Estados Contratantes y los funcionarios consulares del Estado a que corresponda la localidad o región falsamente indicada cuando se trate de un caso de falsa indicación de origen o procedencia geográficos, tendrán personalidad legal suficiente para ejercitar las acciones y recursos correspondientes y continuárselas por todos sus trámites ante las autoridades administrativas y tribunales de justicia de los Estados Contratantes.

Igual personalidad tendrán las comisiones o instituciones oficiales y los sindicatos o asociaciones que representen a la industria, a la agricultura o al comercio, legalmente establecidas para la defensa de los procedimientos honrados y leales.

CAPÍTULO VII.

DISPOSICIONES COMUNES

Artículo 32.

Las autoridades administrativas y los tribunales de justicia de cada Estado Contratante son los únicos competentes para resolver los expedientes administrativos y los juicios contencioso-administrativos, civiles o criminales que se incoaren con motivo de la aplicación de las leyes nacionales.

or their marks, which are the instrumentality of the acts of unfair competition, shall be liable to seizure or destruction, or the offending markings obliterated, as the case may be.

Article 31.

Any manufacturer, industrialist, merchant or agriculturist, interested in the production, manufacture, or trade in the merchandise or articles affected by any prohibited act or deed, as well as his agents or representatives in any of the Contracting States and the consular officers of the state to which the locality or region falsely indicated as the place to which belongs the geographical origin or source, shall have sufficient legal authority to take and prosecute the necessary actions and proceedings before the administrative authorities and the courts of the Contracting States.

The same authority shall be enjoyed by official commissions or institutions and by syndicates or associations which represent the interests of industry, agriculture or commerce and which have been legally established for the defense of honest and fair trade methods.

CHAPTER VII.

GENERAL PROVISIONS

Article 32.

The administrative authorities and the courts shall have sole jurisdiction over administrative proceedings and administrative judgments, civil or criminal, arising in matters relating to the application of the national law.

suas marcas que sejam a causa do acto de concurrence desleal, serão sujeitos a apprehensão ou serão obliteradas as marcações offensivas, conforme as exigencias do caso.

Artigo 31.

Qualquer fabricante, industrial, negociante ou agricultor interessado na producção, fabricação ou commercio de artigos affectados por qualquer acção ou acto prohibido, assim como os seus agentes ou representantes em qualquer dos Estados Contractantes e os funcionários consulares do Estado ao qual pertencer a localidade ou região falsamente indicada como logar de origem, ou procedencia geographica, terão autoridade legal suficiente para instituir e proseguir as necessarias accões e processos perante as autoridades administrativas e os tribunaes de justiça dos Estados Contractantes.

ques qui auront fait l'objet de la concurrence déloyale seront susceptibles de saisie, de destruction ou d'être rendus inutilisables suivant le cas.

Article 31.

Tout fabricant, industriel, commerçant ou agriculteur intéressé dans la production, la fabrication ou le commerce des marchandises ou articles affectés par tout acte ou fait prohibé, aussi bien que ses agents ou représentants dans l'un des États contractants, ainsi que les agents consulaires de l'État auquel appartient la localité ou région faussement indiquée comme lieu d'origine ou de provenance auront pouvoir légal suffisant pour entreprendre toute action et poursuites consécutives par devant les autorités administratives et les tribunaux des États contractants.

Equal autoridade terão as comissões ou instituições officiaes e os syndicatos ou associações que representem os interesses da industria, agricultura ou commercio, e que tenham sido legalmente organizados para a defesa de methodos de negocio honestos e leaes.

CAPITULO VII.

DISPOSIÇÕES GERAES.

Artigo 32.

As autoridades administrativas e os tribunaes terão jurisdicção privativa sobre os processos administrativos e julgamentos administrativos, civis ou criminaes, oriundos de matérias relativas à applicação da lei nacional.

Le même pouvoir appartiendra aux commissions ou institutions officielles, ainsi qu'aux syndicats ou associations qui représentent les intérêts de l'industrie, l'agriculture ou le commerce et qui sont légalement établis pour la défense des procédés honorables et honnêtes.

CHAPITRE VII.

DISPOSITIONS GÉNÉRALES.

Article 32.

Les autorités administratives et les tribunaux de chaque État contractant auront seule juridiction en matière de procédure administrative et de jugements administratifs, civils ou criminels concernant l'application de la loi nationale.

Las dudas que se susciten acerca de la interpretación o aplicación de los preceptos de esta Convención serán resueltas por los tribunales de justicia de cada Estado y sólo en el caso de denegación de justicia serán sometidas a arbitraje.

Artículo 33.

Cada uno de los Estados Contratantes en que no exista, se compromete a establecer un servicio para la protección marcaria y la represión de la competencia desleal y de las falsas indicaciones de origen o procedencia geográficos, debiendo publicar en el periódico oficial del Gobierno, o en otra forma periódica, las marcas solicitadas y concedidas y las decisiones administrativas recaídas en esta materia.

Artículo 34.

La presente Convención será susceptible de revisiones periódicas con objeto de introducir en ella las mejoras que la experiencia indique, aprovechándose de la oportunidad de la celebración de las conferencias internacionales americanas, recomendándose que cada país envíe en su delegación expertos en materias marcarias para que puedan realizar un trabajo efectivo.

La administración del Estado donde deberá celebrarse la Conferencia preparará sus trabajos con la ayuda de la Unión Panamericana y de la Oficina Interamericana de Marcas.

El director de la Oficina Interamericana podrá asistir a las sesiones de la conferencia y tomará parte en las discusiones con voz, pero sin voto.

Any differences which may arise with respect to the interpretation or application of the principles of this Convention shall be settled by the courts of justice of each State, and only in case of the denial of justice shall they be submitted to arbitration.

Article 33.

Each of the Contracting States, in which it does not yet exist, hereby agrees to establish a protective service, for the suppression of unfair competition and false indication of geographic origin or source, and to publish for opposition in the official publication of the government, or in some other periodical, the trade marks solicited and granted as well as the administrative decisions made in the matter.

Article 34.

The present Convention shall be subject to periodic revision with the object of introducing therein such improvements as experience may indicate, taking advantage of any international conferences held by the American States, to which each country shall send a delegation in which it is recommended that there be included experts in the subject of trade marks, in order that effective results may be achieved.

The national administration of the country in which such conferences are held shall prepare, with the assistance of the Pan American Union and the Inter-American Trade Mark Bureau, the work of the respective conference.

The Director of the Inter-American Trade Mark Bureau may attend the sessions of such conferences and may take part in the discussions, but shall have no vote.

Quaesquer differenças que possam surgir com respeito à interpretação ou applicação dos principes desta Convenção, serão solucionados pelos tribunais de justiça de cada Estado, e somente no caso de denegação de justiça serão submetidas a arbitragem.

Artigo 33.

Cada um dos Estados Contratantes em que ainda não existir, ora se compromette a estabelecer um serviço protectivo para a suppression da concurrence déloyale e falsas indicações de origem e procedencia geográfica e a publicar para fins de opposition nas publicações officiaes de Governo, ou em outro periodico, a marca de fabrica solicitada e outorgada assim como as decisões administrativas tomadas sobre a materia.

Artigo 34.

A presente convenção será sujeito a revisão periodica com o fim de nella se introduzirem os melhoramentos que a experiecia possa indicar, com aproveitamento de quaesquer das conferencias internacionaes realizadas pelos Estados Americanos, ao qual cada nação enviará uma delegação na qual se recommenda sejam incluidos peritos na materia da marcas de fabrica, a fim de que sejam alcançados resultados efectivos.

A administração nacional do paiz em que se realizarem taes conferencias preparará, com o auxilio da União Pan-Americanana e a Secretaria Inter-Americanana de Marcas de Fabrica, o trabalho da respectiva conferencia.

O Director da Secretaria Inter-Americanana poderá assistir ás sessões de taes conferencias e poderá tomar parte nas discussões, porém não terá voto.

Tous différends pouvant s'élever quant à l'interprétation ou de l'application des principes de cette Convention seront réglés par les tribunaux de chaque Etat, et seulement en cas de déni de justice seront soumis à l'arbitrage.

Article 33.

Chacun des États contractants dans lequel il n'existe pas encore, s'engage à établir un service de protection pour la suppression de la concurrence déloyale et des fausses indications d'origine ou de provenance géographique et à insérer, dans les publications officielles du Gouvernement ou dans tout autre périodique, les marques de fabrique soumises et agréées, aussi bien que les décisions administratives rendues en la matière.

Article 34.

La présente Convention sera sujette à une révision périodique dans le but d'y introduire telles améliorations que l'expérience peut indiquer, profitant de toutes conférences internationales tenues par les États américains, auxquelles chaque pays enverra une délégation dans laquelle il est recommandé de faire entrer des spécialistes en matière de marques de fabrique, à l'effet d'aboutir à des résultats effectifs.

L'Administration nationale du pays dans lequel se tiendront ces conférences préparera, avec l'assistance de l'Union Panaméricaine et du Bureau Interaméricain des Marques de Fabrique, le travail de la conférence.

Le directeur du Bureau Inter-américain pourra assister aux réunions de ces conférences et prendre part aux discussions, mais il n'y aura pas droit de vote.

Artículo 35.

Las estipulaciones contenidas en esta Convención tendrán fuerza de ley en aquellos Estados en que los tratados internacionales tienen ese carácter tan pronto como son ratificados por sus órganos constitucionales.

Los Estados Contratantes en que el cumplimiento de los pactos internacionales esté subordinado a la promulgación de leyes concomitantes, al aceptar en principio esta Convención se obligan a solicitar de sus órganos legislativos la adopción, en el más breve plazo posible, de la legislación que sea necesaria para ponerla en vigor, de acuerdo con sus prescripciones constitucionales.

Artículo 36.

Los Estados Contratantes convienen en que, tan pronto como esta Convención entre en vigor, las Convenciones sobre Marcas de Fábrica de 1910 y 1923 quedarán automáticamente sin efecto alguno, pero cualesquiera derechos que de acuerdo con sus estipulaciones se hayan adquirido o puedan adquirirse hasta la fecha en que entre en vigor esta Convención, continuarán siendo válidos hasta que expiren.

Artículo 37.

La presente Convención será ratificada por los Estados Contratantes de acuerdo con sus procedimientos constitucionales.

La Convención original y los instrumentos de ratificación serán depositados en la Unión Panamericana, la que enviará copia certificada del primero y comunicará aviso del recibo de dichas ratificaciones a los Gobiernos de los Estados Contratantes, entrando la Convención en vigor entre los Estados Contratantes en el orden en que vayan depositando sus ratificaciones.

Article 35.

The provisions of this Convention shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs.

The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Convention, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

Article 36.

The Contracting States agree that, as soon as this Convention becomes effective, the Trade Mark Conventions of 1910 and 1923 shall automatically cease to have effect; but any rights which have been acquired, or which may be acquired thereunder, up to the time of the coming into effect of this Convention, shall continue to be valid until their due expiration.

Article 37.

The present Convention shall be ratified by the Contracting States in conformity with their respective constitutional procedures.

The original Convention and the instruments of ratification shall be deposited with the Pan American Union which shall transmit certified copies of the former and shall communicate notice of such ratifications to the other signatory Governments, and the Convention shall enter into effect for the Contracting States in the order that they deposit their ratifications.

Artigo 35.

As disposições desta Convenção terão força de lei em todos os Estados em que os tratados internacionaes possuam tal carácter, desde o momento em que forem ratificadas pelos seus órgãos constitucionaes.

Os Estados Contractantes em que o cumprimento de accordos internacionaes depender da decretação de leis apropriadas ou da aceitação em principio desta convenção concordam em solicitar dos seus órgãos legislativos a decretação da necessaria legislação no mais breve periodo de tempo possível e de acordo com as suas disposições constitucionaes.

Artigo 36.

Os Estados Contractantes concordam em que logo que esta convenção entre em vigor, a Convenção de Marcas de Fabricas de 1910 e 1923 cessarão automaticamente de vigorar, porém quaequer direitos que tenham sido adquiridos, ou que venham a ser adquiridos de acordo com as mesmas até o momento de entrar em vigor esta convenção continuarão a ser validos até a sua devida expiração.

Artigo 37.

A presente Convenção será ratificada pelas Altas Partes Contractantes na conformidade dos seus respectivos processos constitucionaes.

A Convenção original e os instrumentos de ratificação serão depositados na União Pan-Americana, que transmittirá copias certificadas da primeira e comunicará a notificação das referidas ratificações aos outros Governos Signatarios, e a convenção entrará em vigor para as Altas Partes Contractantes na ordem em que depositarem as suas ratificações.

Article 35.

Les dispositions de cette Convention auront force de loi dans les États où les traités internationaux ont ce caractère, aussitôt qu'ils ont été ratifiés par leurs organes constitutionnels.

Les États contractants dans lesquels la mise en vigueur d'accords internationaux dépend de la promulgation de lois appropriées, conviennent, par l'acceptation en principe de cette Convention, à requérir de leurs corps législatifs l'adoption de la législation nécessaire dans le plus court délai possible d'accord avec leurs prescriptions constitutionnelles.

Article 36.

Les États contractants conviennent qu'aussitôt que cette Convention deviendra effective, les Conventions sur les marques de fabrique de 1910 et 1923 cesseront automatiquement d'être en vigueur, mais tous droits qui ont été acquis ou qui peuvent être acquis aux termes de celles-ci jusqu'à l'entrée en vigueur de la présente Convention continueront à être valides jusqu'à leur expiration.

Article 37.

La présente Convention sera ratifiée par les Hautes Parties contractantes conformément à leurs procédures constitutionnelles respectives.

La Convention originale et les instruments de ratification seront déposés à l'Union Panaméricaine qui en transmettra des copies certifiées et notifiera les ratifications reçues aux gouvernements signataires. La Convention entrera en vigueur pour les Hautes États contractants dans l'ordre dans lequel ils auront déposé leurs ratifications.

Esta Convención regirá indefinidamente, pero podrá ser denunciada mediante aviso anticipado de un año, transcurrido el cual, cesará en sus efectos para el Estado denunciante, quedando subsistente para los demás contratantes. La denuncia será dirigida a la Unión Panamericana, la que trásmítirá aviso de su recibo a los Gobiernos de todos los demás Estados.

Los Estados Americanos que no hayan suscrito esta Convención podrán adherirse a ella, enviando el instrumento oficial en que se consigne esta adhesión a la Unión Panamericana, la que notificará aviso de su recibo a los Gobiernos de los demás Estados Contratantes en la forma antes expresada.

En testimonio de lo cual, los delegados arriba nombrados firman la presente Convención en español, inglés, portugués y francés y estampan sus respectivos sellos.

Hecha en la ciudad de Washington, a los veinte días del mes de febrero de mil novecientos veintinueve.

This Convention shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance, at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other States. All denunciations shall be sent to the Pan American Union which will thereupon transmit notice thereof to the other Contracting States.

The American States which have not subscribed to this Convention may adhere thereto by sending the respective official instrument to the Pan American Union which, in turn, will notify the governments of the remaining Contracting States in the manner previously indicated.

In witness whereof the above named delegates have signed this Convention in English, Spanish, Portuguese and French, and thereto have affixed their respective seals.

Done in the City of Washington, on the twentieth day of February in the year one thousand nine hundred and twenty-nine.

Esta Convenção permanecerá em vigor indefinidamente, porém poderá ser denunciada por meio de notificação dada com um anno de antecedencia, á expiração do qual cessará de vigorar no que diz respeito á Parte denunciante, mas continuará a vigorar no que diz respeito aos outros Estados Contractantes. Toda a denuncia será enviada á União Pan-Americana que em seguida a transmitirá aos outros Estados Contractantes.

Os Estados Americanos que não tenham assignado esta Convenção poderão aderir a mesma enviando o respectivo instrumento oficial á União Pan-Americana, que, por sua vez, notificará em seguida aos Governos dos outros Estados Contractantes na maneira previamente indicada.

Em testemunho do que os delegados acima designados assignam esta Convenção em portuguez, inglez, hespanhol, e francez, e appõem á mesma os seus respectivos sellos.

Dada na Cidade de Washington, aos vinte dias do mez de fevereiro do anno mil e nove centos e vinte e nove.

La présente Convention restera en vigueur indéfiniment; mais elle peut être dénoncée au moyen d'un avis donné une année d'avance, à l'expiration de laquelle elle cessera d'avoir force pour la Partie qui l'aura dénoncée; mais elle restera en vigueur en ce qui concerne les autres États contractants. Toutes les dénonciations seront addressées à l'Union Panaméricaine qui en donnera aussitôt avis aux autres États Contractants.

Les États américains qui n'ont pas signé la présente Convention peuvent y adhérer en envoyant l'instrument officiel qui constate cette adhésion à l'Union Panaméricaine qui, à son tour, en donnera avis aux Gouvernements des autres États contractants de la manière précédemment indiquée.

En foi de quoi, les délégués sus-nommés ont signé la présente Convention en français, en espagnol, en anglais et en portugais et y ont apposé leurs sceaux respectifs.

Fait en la ville de Washington, le vingtième jour du mois de février de l'an mil neuf cent vingt-neuf.

- [SEAL.] A. GONZÁLEZ PRADA.
- [SEAL.] EMETERIO CANO DE LA VEGA.
- [SEAL.] JUAN VICENTE RAMÍREZ.
- [SEAL.] GONZALO ZALDUMBIDE.
- [SEAL.] VARELA.
- [SEAL.] FRANCISCO DE MOYA.
- [SEAL.] OSCAR BLANCO VIEL.

Subscribo la presente Convención en cuanto sus disposiciones no sean contrarias a la legislación nacional de mi país, haciendo reserva expresa de las disposiciones de esta Convención sobre las cuales no hay legislación en Chile.

- [SEAL.] R. J. ALFARO.
- [SEAL.] JUAN B. CHEVALIER.
- [SEAL.] P. R. RINCÓN.
- [SEAL.] MANUEL CASTRO QUESADA.
- [SEAL.] F. E. PIZA.
- [SEAL.] GUSTAVO GUTIÉRREZ.
- [SEAL.] A. L. BUJILL.
- [SEAL.] ADRIÁN RECINOS.
- [SEAL.] RAMIRO FERNÁNDEZ.
- [SEAL.] RAOUL LIZAIRE.
- [SEAL.] PABLO GARCÍA DE LA PARRA.
- [SEAL.] CARLOS DELGADO DE CARVALHO.
- [SEAL.] F. SUÁSTEGUI.
- [SEAL.] VICENTE VITA.
- [SEAL.] CARLOS IZAGUIRRE V.
- [SEAL.] EDWARD S. ROGERS.
- [SEAL.] THOMAS E. ROBERTSON.
- [SEAL.] FRANCIS WHITE.

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PROTOCOLO SOBRE EL REGISTRO INTERAMERICANO DE MARCAS DE FÁBRICA

POR CUANTO: los Gobiernos de Perú, Bolivia, Paraguay, Ecuador, Uruguay, República Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haití, Colombia, Brasil, México, Nicaragua, Honduras y Estados Unidos de América, han firmado hoy en Washington por medio de sus respectivos delegados una Convención General Interamericana de Protección Marcaaria y Comercial;

POR CUANTO: se considera conveniente el mantenimiento de una agencia internacional americana que facilite a los fabricantes, industriales, comerciantes o agricultores el goce de la protección marcaaria y comercial que dicha Convención les otorga, y que sirva, además, de centro de información, coadyuvando al cumplimiento y mejoramiento de las disposiciones contenidas en ella;

POR CUANTO: la adopción por separado de una convención general de carácter sustantivo y de un protocolo como éste, puede facilitar la ratificación de los Estados Contratantes y la adhesión de las Repúblicas Americanas que no han tomado parte en las negociaciones, toda vez que la aceptación de la Convención no lleva implícita la de este instrumento,

Los Gobiernos arriba mencionados han convenido lo siguiente:

Artículo 1.

Las personas naturales o jurídicas domiciliadas o que posean un establecimiento fabril o comercial o una explotación agrícola en cualquiera de los Estados que hayan ratificado o se hayan adherido al presente Protocolo podrán obtener la protección de

PROTOCOL ON THE INTER-AMERICAN REGISTRATION OF TRADE MARKS.

WHEREAS, The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America have this day signed at Washington through their respective delegates a General Inter-American Convention for Trade Mark and Commercial Protection;

WHEREAS, the maintenance of an international American agency is considered desirable that manufacturers, industrialists, merchants and agriculturists may enjoy the trade mark and commercial protection which that Convention grants them, and that it may serve as a center of information, and cooperate in the fulfillment and improvement of the provisions of the Convention;

WHEREAS, the adoption of a general convention and a protocol may facilitate ratification among the Contracting States and adherence among the American Republics which have not taken part in the negotiations, since acceptance of the Convention does not imply acceptance of this instrument,

The above mentioned governments have agreed as follows:

Article 1.

Natural or juridical persons domiciled in or those who possess a manufacturing or commercial establishment or an agricultural enterprise in any of the States that may have ratified or adhered to the present Protocol, may obtain the protection of the

PROTOCOLLO SOBRE O REGISTRO INTER-AMERICANO DE MARCAS DE FABRICA

CONSIDERANDO QUE os Governos de Perú, Bolivia, Paraguay, Ecuador, Uruguay, Republica Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brasil, Mexico, Nicaragua, Honduras e dos Estados Unidos da America assignarão hoje em Washington por intermédio dos seus respectivos delegados uma Convenção inter-Americana Geral para a Protecção de Marcas de Fabrica e Protecção Comercial;

CONSIDERANDO QUE se julga conveniente a manutenção de uma agencia internacional americana além de que os fabricantes, industriaes, negociantes e agricultores gozem da protecção de marcas de fabrica e nomes commerciaes que esta Convenção lhes outorga, e para que sirva de centro de informação, e coopere no cumprimento e melhoramento das disposições da Convenção;

CONSIDERANDO QUE a adopção de uma convenção geral e um protocollo poderão facilitar a ratificação pelos Estados Contractantes e a adesão das Republicas Americanas que ainda não tenham tomado parte nas negociações, já que a aceitação da convenção não supõe aceitação deste instrumento,

Os Governos acima mencionados concordaram no seguinte:

Artigo 1.

Pessoas naturaes ou juridicas domiciliadas que possuam um estabelecimento fabril ou comercial ou uma empresa agricola em qualquer dos Estados que tenham ratificado ou adherido ao presente Protocollo, poderão obter a protecção de suas marcas de

PROTOCOLE SUR L'ENREGISTREMENT INTERAMÉRICAIN DES MARQUES DE FABRIQUE

ATTENDU que les Gouvernements du Pérou, Bolivie, Paraguay, Equateur, Uruguay, République Dominicaine, Chili, Panama, Venezuela, Costa Rica, Cuba, Guatémala, Haïti, Colombie, Brésil, Mexique, Nicaragua, Honduras, et des Etats-Unis ont signé ce jour à Washington, par l'intermédiaire de leurs Délégués respectifs une Convention Générale Interaméricaine pour la Protection des Marques de Fabrique et du Nom Commercial;

ATTENDU que le maintien d'une agence américaine internationale est considéré comme désirable afin que les fabricants, industriels, commerçants et agriculteurs puissent jouir de la protection de leurs marques de fabrique et de commerce que cette Convention leur assure, et afin qu'elle serve de centre d'information et coopère à l'observance et à l'amélioration des dispositions de la Convention;

ATTENDU que l'adoption d'une Convention générale et d'un protocole peut faciliter la ratification par les Etats contractants et l'adhésion des Républiques américaines qui n'ont pas pris part aux négociations, puisque l'acceptation de la Convention n'implique pas acceptation de cet instrument,

Les Gouvernements ci-dessus nommés ont convenu de ce qui suit:

Article 1.

Les personnes naturelles ou juridiques domiciliées dans un des Etats ayant ratifié le présent Protocole ou y ayant adhéré, ou celles qui possèdent un établissement manufacturier ou commercial ou une entreprise agricole dans l'un de ces Etats peuvent

sus marcas mediante el registro de las mismas en la Oficina Interamericana de Marcas.

Artículo 2.

El titular de una marca registrada o depositada en uno de los Estados Contratantes que desee registrarla en los demás Estados Contratantes, deberá presentar una solicitud a tal efecto en la Oficina respectiva del país de registro original, cuya oficina la cursará a la Oficina Interamericana de Marcas cumpliendo las reglas dispuestas en el Reglamento, y a cuya solicitud acompañará un giro postal o de un banco de crédito reconocido, por un total de \$50.00 como derechos de la Oficina Interamericana de Marcas, más el importe de los derechos que señale la ley nacional de cada uno de los países en que desea obtener protección para su marca.

Artículo 3.

Immediatamente después de recibida la solicitud de registro de una marca y de encontrar que llena los requisitos del caso, la Oficina Interamericana de Marcas expedirá un certificado del registro en la oficina y transmitirá por correo en sobre certificado copias de la misma acompañadas de un giro por la cantidad correspondiente a las Oficinas respectivas de los Estados en que se deseé la protección. En el caso de nuevas adhesiones o ratificaciones de Estados después de registrada una marca, la Oficina Interamericana avisará a los propietarios de marcas registradas por su conducto, dichas adhesiones o ratificaciones por medio de la Oficina respectiva de su país, informándoles del derecho que tienen de registrar sus marcas en los nuevos Estados

trade marks through the registration of such marks in the Inter-American Trade Mark Bureau.

Article 2.

The owner of a mark registered or deposited in one of the Contracting States who desires to register it in any of the other Contracting States, shall file an application to this effect in the office of the country of original registration which office shall transmit it to the Inter-American Trade Mark Bureau, complying with the Regulations. A postal money order or draft on a bank of recognized standing, in the amount of \$50.00, as a fee for the Inter-American Trade Mark Bureau, plus the amount of the fees required by the national law of each of the countries in which he desires to obtain protection for his mark, shall accompany such application.

Article 3.

Immediately on receipt of the application for the registration of a mark, and on determining that it fulfills all the requirements, the Inter-American Trade Mark Bureau shall issue a certificate and shall transmit by registered mail copies of the same accompanied by a money order for the amount required by the respective Offices of the States in which protection is desired. In the case of adhesions or ratifications of additional states after the registration of a mark, the Inter-American Bureau shall, through the respective offices of their countries, inform the proprietors of marks registered through the Bureau, of said adhesions or ratifications, informing them of the right that they have to register their marks in the new adhering or ratifying States.

fábrica mediante o registro das mesmas na Secretaria Inter-Americana de Marcas de Fábrica.

Artigo 2.

O proprietário de uma marca registrada ou depositada em um dos Estados Contractantes que desejar registral-a nos outros Estados Contractantes, fará um pedido nesse sentido à respectiva repartição do paiz de registro original cuja repartição a transmittirá à Secretaria Inter-Americana de Marcas de Fábrica, cumprindo com o Regulamento. Esse pedido será acompanhado de um vale postal ou letra sobre um banco de reconhecida reputação, no valor de \$50.00, como emolumento da Secretaria Inter-Americana de Marcas de Fábrica, mais a importancia das taxas exigidas pela lei nacional de cada um dos paizes em que elle desejar obter protecção para a sua marca.

Artigo 3.

Immediatamente depois de receber um pedido de registro de uma marca, e de determinar que tal pedido satisfaz todas as exigencias, a Secretaria Inter-Americana de Marcas de Fábrica expedirá um certificado e transmitirá por correio registrado copias da mesma acompanhadas de um vale postal para a quantia exigida pelas respectivas Repartições dos Estados em que se deseja protecção. No caso de adhesões ou ratificações de Estados adicionaes após registro da marca, a Secretaria Inter-Americana, por intermedio da respectiva repartição do seu paiz, informará os proprietarios das marcas registradas na Secretaria, das ditas adhesões ou ratificações, notificando-os do direito que lhes assiste de registrar as suas marcas

obtenir l'enregistrement de leurs marques de fabrique moyennant l'enregistrement de ces marques au Bureau Interaméricain des Marques de Fabrique.

Article 2.

Le propriétaire d'une marque enregistrée et deposée dans l'un des États contractants qui désire la faire enregistrer dans tout autre des États contractants adressera une demande à cet effet au bureau intéressé du pays de l'enregistrement original, lequel la transmettra au Bureau Interaméricain des Marques de Fabrique, conformément aux Règlements. Un mandat poste ou un chèque sur une banque de crédit connue pour la somme de \$50.00 à titre de taxe en faveur du Bureau Interaméricain des Marques de Fabrique, plus le montant des droits requis par la législation nationale de chacun des pays dans lesquels il désire obtenir protection pour sa marque, sera joint à cette demande.

Article 3.

Aussitôt reçue la demande d'enregistrement d'une marque et aussitôt après constatation qu'elle remplit les conditions requises, le Bureau Interaméricain des Marques de Fabrique émettra un certificat interaméricain d'enregistrement et transmettra par pli recommandé des copies de celle-ci accompagnées d'une traite pour le montant requis par les Bureaux respectifs des États dans lesquels la protection est désirée. En cas d'adhésions ou ratifications d'États nouveaux postérieurement à l'enregistrement d'une marque, le Bureau Interaméricain par la voie des services respectifs de leur pays avisera les propriétaires de marques enregistrées par ce Bureau des dites adhesões ou ratifications; les informant de leur droit de faire

adherentes o ratificantes, cuya registro se efectuará en la forma antes expresada.

in which registration shall be effected in the manner above mentioned.

Artículo 4.

Cada uno de los Estados Contratantes por conducto de su Oficina de Marcas, acusará inmediatamente el recibo de la solicitud de registro de cada Marca a la Oficina Interamericana, y procederá a tramitar el expediente con toda la prontitud posible publicándola por cuenta del solicitante en los periódicos oficiales de costumbre, y oportunamente notificará a la Oficina Interamericana la resolución que haya dictado de acuerdo con su legislación interna y las estipulaciones de esta Convención.

En el caso de que sea otorgada la protección a la marca solicitada, expedirá un certificado de registro haciendo constar la vida legal del registro, el cual certificado será otorgado con las mismas formalidades que los nacionales y surtirá los mismos efectos en cuanto a la propiedad de la marca. Este certificado de registro se enviará a la Oficina Interamericana de Marcas, quien lo remitirá al propietario por conducto de la Oficina respectiva del país de origen.

Si dentro de un plazo de siete meses de haber sido recibida por un Estado Contratante la solicitud de protección de una marca remitida por la Oficina Interamericana de Marcas, la administración de ese Estado no ha comunicado a dicha Oficina la denegación de protección fundada en los preceptos de su legislación interna o de la Convención General Interamericana

Article 4.

Each of the Contracting States, through its Trade Mark Office, shall immediately acknowledge to the Inter-American Bureau, the receipt of the application for registration of each mark, and shall proceed to carry through the proceedings with every possible dispatch, directing that the application be published at the expense of the applicant in the usual official papers, and at the proper time shall notify the Inter-American Bureau of the action that it may have taken in accordance with its internal legislation and the provisions of this Convention.

In case protection is granted to the mark, it shall issue a certificate of registration in which shall be indicated the legal period of registration; which certificate shall be issued with the same formalities as national certificates and shall have the same effect in so far as ownership of the mark is concerned. This certificate of registration shall be sent to the Inter-American Trade Mark Bureau, which shall transmit it to the proprietor of the mark through the proper office of the country of origin.

If, within seven months after the receipt by a Contracting State of an application for the protection of a trade mark transmitted by the Inter-American Trade Mark Bureau, the administration of such State does not communicate to the Bureau notice of refusal of protection based on the provisions of its domestic legislation or on the provisions of the General Inter-American

nos novos Estados adherentes ou ratificantes, nos quais o registro deverá ser efectuado da maneira acima referida.

Artigo 4.

Cada um dos Estados Contractantes, por intermedio de sua Repartição de Marcas de Fabrica, notificará imediatamente à Secretaria de Marcas de Fabrica do recebimento de cada pedido de registro e procederá a ultimar os devidos processos com a maior brevidade possível, fazendo publicar o pedido ás expensas do requerente nas usuais publicações officiaes, e em tempo opportuno notificará a Secretaria Inter-Americanica da decisão a que tiver chegado de acordo com a sua legislação interna e as disposições desta Convenção.

No caso de ser outorgada protecção á marca, expedirá um certificado de registro no qual será indicado o periodo legal de registro inter-americano; o qual certificado será expedido com as mesmas formalidades que os certificados nacionaes e terá o mesmo efeito no que diz respeito á posse da marca. Este certificado de registro será enviado á Secretaria Inter-Americanica de Marcas de Fabrica, que o remetterá ao proprietario da marca por intermedio da competente repartição do paiz de crigem.

Se, dentro de sete mezes apóis recebimento por um Estado Contractante de um pedido de protecção para uma marca de fabrica transmittido pela Secretaria Inter-Americanica de Marcas de Fabrica, a administração do referido Estado não comunicar á dita Secretaria a notificação da recusa da protecção baseada nas disposições de sua legislação interna ou nas disposições da Convenção Geral

enregistrer leurs marques dans les nouveaux Etats adhérents ou ayant ratifié le présent Protocole, dans lesquels l'enregistrement sera effectué de la manière plus haut mentionnée.

Article 4.

Chacun des Etats contractants, par la voie de son Bureau des Marques de Fabrique, accusera immédiatement réception au Bureau Interaméricain de la demande d'enregistrement de chaque marque et procédera à l'expédition des formalités le plus rapidement possible; fera insérer la demande dans les publications officielles usuelles et avisera en temps utile le Bureau interaméricain de la décision prise conformément à la législation nationale et aux dispositions de cette Convention.

Au cas où la protection est accordée à la marque l'Etat émettra un certificat d'enregistrement dans lequel sera indiqué la durée légale d'enregistrement. Ce certificat sera émis dans les mêmes formes que les certificats nationaux et en aura le même effet en ce qui concerne la propriété de la marque. Ce certificat d'enregistrement sera adressé au Bureau Interaméricain des Marques de Fabriques qui le transmettra au propriétaire de la marque par la voie du Bureau approprié du pays d'origine.

Si sept mois après la réception par un Etat contractant d'une demande pour la protection de la marque de fabrique transmise par le Bureau Interaméricain des Marques de Fabrique l'Administration du dit Etat n'a pas fait parvenir à ce Bureau un avis de refus de protection basé sur les prescriptions de sa législation nationale ou sur les dispositions de la Convention Générale Inter-

de Protección Marcaaria y Comercial, se considerará registrada dicha marca, y la Oficina Interamericana lo hará saber así al solicitante por conducto del país de origen expediendo un certificado especial que tendrá la misma fuerza y valor legal de un certificado nacional.

En el caso de que la protección de una marca sea denegada de acuerdo con los preceptos de la legislación de cada Estado o de la Convención General Interamericana de Protección Marcaaria y Comercial, el solicitante podrá hacer uso de los mismos recursos que las leyes respectivas conceden a los ciudadanos del Estado que dictó la negativa de protección, y los términos que para el ejercicio de dichos recursos y acciones concedan las leyes nacionales empezarán a contarse después de los cuatro meses de haberse recibido el aviso de negativa en la Oficina Interamericana de Marcas.

El registro interamericano de una marca comunicado a los Estados Contratantes, que sea protegida en éstos, substituirá cualquier otro registro de la misma marca que haya sido hecho anteriormente por cualquier otro medio, sin perjuicio de los derechos adquiridos por el registro nacional.

Artículo 5.

Igual procedimiento al estipulado en los artículos anteriores se seguirá para el registro de la trasmisión de la propiedad de una marca o de la cesión del uso de la misma, pero en ese caso sólo se remitirá a la Oficina Interamericana la cantidad de \$10.00 que retendrá la Oficina, más el importe que fije la legislación interna de cada país en que se desee registrar la trasmisión o cesión, en-

Convention for Trade Mark and Commercial Protection such mark shall be considered as registered and the Inter-American Trade Mark Bureau shall so communicate to the applicant through the country of origin, and shall issue a special certificate which shall have the same force and legal value as a national certificate.

In case protection of a mark is refused in accordance with the provisions of the internal legislation of a State or of the General Inter-American Convention for Trade Mark and Commercial Protection, the applicant may have the same recourse which the respective laws grant to the citizens of the state refusing protection. The period within which the recourse and actions granted by national laws may be exercised shall begin four months after receipt by the Inter-American Trade Mark Bureau of the notice of refusal.

The Inter-American registration of a trade mark communicated to the Contracting States, which may already enjoy protection in such States shall replace any other registration of the same mark effected previously by any other means, without prejudice to the rights already acquired by national registration.

Article 5.

In order to effect the transfer of ownership of a trade mark or the assignment of the use of the same, the same procedure as that set forth in the foregoing articles shall be followed, except that in this case there shall only be remitted to the Inter-American Bureau \$10.00, to be retained by said Bureau, plus the fees fixed by the domestic legislation of each one of the countries in which it is

Inter-Americana para a Protecção de Marcas de Fabrica e Protecção Commercial, a referida marca será considerada como registrada e a Secretaria Inter-Americanica informará nesse sentido ao requerente por intermedio do paiz de origem, e expedirá um certificado especial que terá a mesma força e valor legal que um certificado nacional.

No caso de ser negada protecção a uma marca de acordo com as disposições da legislação interna de um Estado ou da Convenção Geral Inter-Americanica para a Protecção de Marcas de Fabrica e Protecção Commercial, o requerente poderá se valer dos mesmos recursos que as respectivas leis outorgam aos cidadãos do Estado que tiver recusado protecção. O periodo dentro do qual poderão ser exercidos os recursos e as ações outorgados pelas leis nacionaes começará quatro mezes após recebimento pela Secretaria Inter-Americanica de Marcas de Fabrica da notificação da recusa.

O registro inter-americano de uma marca de fabrica comunicada aos Estados Contractantes, que estiver já no goso de protecção nos referidos Estados, tomará o lugar de qualquer outro registro da mesma marca previamente efectuado por qualquer outro meio, sem prejuizo dos direitos até então adquiridos por registro nacional.

Artigo 5.

Com o fim de se effectuar a transferencia da posse de uma marca de Fabrica ou a designação do uso da mesma seguir-se-ão os mesmos processos que os constantes do artigo anterior, excepto que neste caso será remettida à Secretaria Inter-Americanica apenas a quantia de dez dollars, para ser retida pela dita Secretaria, mais os emolumentos estabelcidos pela legislacão domestica de cada um

américaine pour la Protection des Marques de Fabrique et du Nom Commercial, la dite marque sera considérée comme enregistrée et le Bureau Interaméricain en informera le requérant par l'intermédiaire du Bureau du pays d'origine, et émettra un certificat spécial qui aura la même force et valeur légale qu'un certificat national.

Dans le cas où la protection d'une marque est refusée conformément aux dispositions de la législation nationale de l'Etat ou de la Convention Générale Interaméricaine pour la Protection des Marques de Fabrique et Commerciale le requérant peut user des recours que les lois respectives accordent aux citoyens de l'Etat qui refuse la protection. Le délai pendant lequel les recours et actions accordés par les lois nationales peuvent être exercés commencera quatre mois après la réception de l'avis de refus par le Bureau Interaméricain des Marques de Fabrica.

L'enregistrement interaméricain d'une marque de fabrique transmise aux Etats contractants qui y est déjà protégée remplacera tout autre enregistrement de la même marque effectué antérieurement par tout autre moyen sans préjudice des droits déjà acquis par l'enregistrement national.

Article 5.

Pour effectuer le transfert de propriété d'une marque de fabrique, ou le transfert de son usage, la même procédure que celle prescrite dans les articles précédents, sera suivie, sauf toutefois que dans ce cas il ne sera remis au Bureau interaméricain que dix dollars revenant au dit Bureau,— plus les droits fixés par la législation nationale de chacun des pays dans lesquels l'enregistrement de

teniéndose que el uso de las marcas puede ser transferido separadamente en cada país.

desired to register the transfer or assignment of the mark, it being understood that the use of trademarks may be transferred separately in each country.

Artículo 6.

Si el solicitante reivindica el color como elemento constitutivo de su marca, se le exigirá:

1. Que lo declare acompañando al registro una nota que indique el color o la combinación de colores que reivindica, y

2. Que una a su solicitud copias o ejemplares, de dicha marca, en colores, tal como se encuentra en uso, los cuales se anexarán a las notificaciones hechas por la Oficina Interamericana. El número de dichos ejemplares se fijará por el Reglamento.

Article 6.

If the applicant claims color as a distinctive element of his mark he shall be required to:

1. Send a statement attached to the application for registration declaring the color or the combination of colors which he claims; and

2. Attach to the application for registration copies or specimens of the mark as actually used, showing the colors claimed, which shall be attached to the notifications sent by the Inter-American Bureau. The number of copies to be sent shall be fixed by the Regulations.

Artículo 7.

Las marcas registradas se publicarán en una hoja periódica editada por la Oficina Interamericana, dando las indicaciones contenidas en la solicitud de registro y un diseño suministrado por el registrante.

Article 7.

Trade marks shall be published in a bulletin edited by the Inter-American Bureau, wherein shall appear the matter contained in the application for registration and an electrotype of the mark supplied by the applicant.

Para la publicidad que ha de darse en los Estados Contratantes a las marcas inscriptas, cada administración recibirá gratuitamente de la Oficina Interamericana el número de ejemplares de la precitada publicación que quiera pedir.

La publicación de una marca en la hoja periódica de la Oficina Interamericana tendrá la misma fuerza que su publicación en los periódicos o boletines oficiales de los Estados Contratantes.

Each administration of the Contracting States shall receive free of charge from the Inter-American Bureau as many copies of the above mentioned publication as it may ask for.

The publication of a mark in the bulletin of the Inter-American Bureau shall have the same effect as publication in the official journals or bulletins of the Contracting States.

dos paizes em que se pretender registrar a transferencia ou a designação do uso da marca, ficando entendido que o uso das marcas de fabrica poderá ser transferido separadamente em cada paiz.

Artigo 6.

Se o registrante requerer a cõr como elemento distintivo de sua marca deverá:

1. Enviar uma declaração appensa ao pedido de registro declarando a cõr ou a combinação de cõres que requer;

2. Juntar ao pedido de registro exemplares ou especimenes da marca conforme se acha effectivamente em uso, mostrando as cõres requeridas, os quaes serão appensos ás notificações enviadas pela Secretaria Inter-Americana. O numero de exemplares a serem enviados será determinado pelo Regulamento.

Artigo 7.

As marcas serão publicadas em um boletim editado pela Secretaria Inter-Americanana, no qual apparacerá a materia contida no pedido de registro e um electro-typo da marca fornecido pelo requerente.

Cada Administração dos Estados Contractantes receberá, livre de despesa, da Secretaria Inter-Americanana tantos exemplares das supracitadas publicações quantas ella solicitar.

A publicação de uma marca no boletim da Secretaria Inter-Americanana terá o mesmo efecto que a sua publicação nos jornaes ou boletins officiaes dos Estados Contractantes.

ce transfert est désiré, étant entendu que l'usage de marques de fabrique peut être transféré séparément dans chaque pays.

Article 6.

Si le requérant revendique une couleur comme élément distinctif de sa marque, il sera tenu:

1. D'envoyer une déclaration annexée à sa demande d'enregistrement indiquant la couleur ou la combinaison de couleurs qu'il revendique;

2. De joindre à sa demande d'enregistrement des copies ou spécimens de la marque actuellement employée, montrant les couleurs revendiquées, lesquels seront annexés aux notifications transmises par le Bureau Inter-américain. Le nombre d'exemplaires à fournir sera fixé par les Règlements.

Article 7.

Les marques de fabrique enregistrées seront insérées dans un Bulletin publié par le Bureau Interaméricain, dans lequel figureront les indications contenues dans la demande d'enregistrement, ainsi qu'une reproduction électrotype de la marque soumise par le requérant.

Chaque administration des Etats contractants recevra gratuitement du Bureau Interaméricain autant d'exemplaires de la publication sus-mentionnée qu'il en sera demandé.

La publication d'une marque dans le bulletin du Bureau Inter-américain aura le même effet que sa publication dans les journaux officiels des Etats contractants.

Artículo 8.

La Oficina Interamericana expedirá a cualquier persona que la pida, mediante un derecho que fijará el Reglamento, copia de las anotaciones hechas en el registro con referencia a una marca determinada.

Artículo 9.

La Oficina registrará también las renovaciones una vez cumplidos los requisitos de la legislación interna de cada Estado Contratante, previo pago de un derecho de \$10.00 para la Oficina y los derechos que corresponden a los Estados en que dichas renovaciones se efectúen.

Seis meses antes de la expiración del término de protección, la Oficina Interamericana pasará aviso oficial a la Administración del país de origen y al propietario de la marca.

Artículo 10.

El propietario de una marca podrá siempre renunciar a la protección en uno o varios de los Estados Contratantes, mediante una declaración enviada a la administración del país de origen de la marca, para ser comunicada a la Oficina Interamericana, la cual notificará a los países a que concierne dicha renuncia.

Artículo 11.

Los que soliciten el registro, depósito, trasmisión, cesión o renovación de una marca por medio de la Oficina Interamericana, podrán nombrar en cualquier tiempo, por medio del correspondiente poder, un agente o apoderado a fin de que los represente en cualquier procedimiento ad-

Article 8.

The Inter-American Bureau, on receipt of payment of a fee to be fixed by the Regulations, shall furnish to any person who may so request, copies of the entries made in the register with reference to any particular mark.

Article 9.

The Inter-American Trade Mark Bureau shall keep a record of renewals which have been effected in compliance with the requirements of the domestic laws of the Contracting States, and after payment of a fee of \$10.00 to the Inter-American Trade Mark Bureau and the customary fees required by the States where said renewal is effected.

Six months prior to the expiration of the period of protection, the Inter-American Bureau shall communicate this information to the administration of the country of origin and to the owner of the mark.

Article 10.

The owner of a trade mark may at any time relinquish protection in one or several of the Contracting States, by means of a notice sent to the administration of the country of origin of the mark, to be communicated to the Inter-American Bureau, which in turn shall notify the countries concerned.

Article 11.

An applicant for registration or deposit, transfer or renewal of a trade mark through the Inter-American Bureau, may appoint by a proper power of attorney at any time, an agent or attorney to represent him in any procedure, administrative, judicial or otherwise, arising in connection

Artigo 8.

A Secretaria Inter-Americana, ao receber o pagamento da taxa a ser fixada pelo Regulamento, fornecerá a qualquer pessoa que as solicitar copias dos assentamentos feitos no registro relativamente a qualquer marca determinada.

Artigo 9.

A Secretaria Inter-Americana de Marcas de Fabrica manterá um registro das renovações que tenham sido effectuadas na conformidade das exigencias das leis internas do Estado Contractante e após pagamento de uma taxa de \$10.00 à Secretaria Inter-Americana de Marcas de Fabrica e as taxas exigidas pelos Estados em que se effectuar a referida renovação.

Seis mezes antes da expiração do prazo de protecção a Secretaria Inter-Americana comunicará essa informação à administração do paiz de origem e ao proprietario da marca.

Artigo 10.

O proprietario de uma marca inter-americana poderá em qualquer tempo renunciar à protecção em um ou varios dos Estados Contractantes, mediante aviso enviado à Administração do paiz de origem da marca para ser comunicado à Secretaria Inter-Americana, que por sua vez notificará os paizes interessados.

Artigo 11.

A pessoa que requerer registro ou deposito, transferencia ou renovação de uma marca por intermedio da Secretaria Inter-American, poderá nomear em qualquer tempo, mediante procuração, um agente ou procurador para representá-la em qualquer procedimento, administrativo, judicial

Article 8.

Le Bureau interaméricain expédiera à tout personne qui en fera la demande, moyennant paiement d'un droit à fixer par les Règlements, copies ou contenu du registre à référant à une marque déterminée.

Article 9.

Le Bureau Interaméricain des Marques de Fabrique tiendra registre des renouvellements qui ont été effectués conformément aux prescriptions de la loi nationale des États contractants moyennant paiement d'un droit de \$10.00 au Bureau Interaméricain des Marques de Fabrique et des droits ordinaires requis par les États dans lesquels la renouvellement est effectué.

Six mois avant l'expiration de la période de protection, le Bureau interaméricain en donnera avis à l'Administration du pays d'origine et au propriétaire de la marque.

Article 10.

Le propriétaire d'une marque de fabrique peut, à tout moment, renoncer à la protection dans l'un ou plusieurs des États contractants au moyen d'un avis adressé à l'Administration du pays d'origine de la marque pour être communiqué au Bureau interaméricain, lequel à son tour, en informera les pays que concerne la dite renonciation.

Article 11.

Tout requérant de l'enregistrement ou dépôt, transfert ou renouvellement d'une marque de fabrique par l'intermédiaire du Bureau Interaméricain, peut désigner par un pouvoir régulier à n'importe quel moment, un agent ou avocat pour le représenter dans toute action administrative,

ministrativo, judicial o de cualquiera otra clase que surja con motivo de dichas marcas o solicitud en cualquiera de los Estados Contratantes.

Dichos apoderados tendrán derecho a notificarse de todas las actuaciones y a recibir y presentar los documentos que fueren necesarios en la Oficina de Marcas de cada país, de acuerdo con las estipulaciones de este Protocolo.

with such trade marks or application in any Contracting State.

Such agents or attorneys shall be entitled to notice of all the proceedings and to receive and present all documents that may be required by the Trade Mark Bureau of each country under the provisions of this Protocol.

Artículo 12.

La Administración del país de origen notificará a la Oficina Interamericana las anulaciones, cancelaciones, renuncias, traspatios y demás cambios que se produjeren en la propiedad o uso de la marca.

La Oficina Interamericana inscribirá dichos cambios, los notificará a las administraciones de los Estados Contratantes, y los publicará en seguida en su periódico.

Se procederá igualmente cuando el propietario de la marca solicite reducir la lista de los productos a que se aplica.

La adición ulterior de un nuevo producto a la lista, no puede obtenerse sino por un nuevo registro efectuado conforme a las disposiciones del artículo 2 de este Protocolo. A la adición se asimila la sustitución de un producto en lugar de otro.

Artículo 13.

Los Estados Contratantes se obligan a enviar por conducto de sus oficinas nacionales de marcas, tan pronto como se publiquen, dos ejemplares de las gacetas o publicaciones oficiales en que aparezcan sentencias o resoluciones judiciales o administrativas, leyes, decretos, reglamentos,

Article 12.

The administration in the country of origin shall notify the Inter-American Bureau of all annulments, cancellations, renunciations, transfers and all other changes in the ownership or use of the mark.

The Inter-American Bureau shall record these changes, notify the administrations of the Contracting States and publish them immediately in its bulletin.

The same procedure shall be followed when the proprietor of the mark requests a reduction in the list of products to which the trade mark is applied.

The subsequent addition of a new product to the list may not be obtained except by a new registration of the mark according to the provisions of Article 2 of this Protocol. The same procedure shall be followed in the case of the substitution of one product for another.

Article 13.

The Contracting States bind themselves to send through their respective national trade mark offices, as soon as they are published, two copies of the official bulletins or publications in which judicial or administrative decisions or resolutions, laws, decrees, regulations, circulars, or

ou outro, oriunda de tais marcas ou pedido em qualquer dos Estados Contractantes.

Os referidos procuradores terão o direito de ser notificados de todos os procedimentos e a receber e produzir todos os documentos que possam ser recebidos pela Secretaria de Marcas de Fabrica de cada um dos países de acordo com as disposições deste Protocollo.

Artigo 12.

A administração do país de origem notificará à Secretaria Inter-Americana das revogações, cancellamentos, renúncias, transferencias e todas as outras mudanças na posse e uso da marca.

A Secretaria Inter-Americana anotará estas mudanças, notificará as Administrações do Estado Contractante e fará imediatamente a competente publicação no seu boletim.

Seguir-se-á o mesmo processo quando o proprietário da marca pedir uma redução na lista de productos aos quais se aplica a marca.

A adição subsequente de um novo producto à lista não poderá ser outorgada excepto por novo registro da marca de acordo com o disposto no Artigo 2 deste Protocollo. Será seguido o mesmo processo no caso da substituição de um producto por outro.

Artigo 13.

Os Estados Contractantes concordam em enviar, por intermédio das suas respectivas repartições nacionaes, logo que forem publicados, dois exemplares dos boletins ou publicações officiaes em que aparecerem decisões ou resoluções judiciaes ou administrativas, leis, decretos, regulamentos, circulares

judiciaire ou autre née à l'occasion de telles marques de fabrique ou demande d'enregistrement dans un des États contractants.

Ces agents ou avocats auront le droit de prendre connaissance de tous actes ou procès-verbaux et de recevoir et de produire tous documents qui peuvent être requis par le Bureau des marques de fabrique de chaque pays conformément aux dispositions de ce protocole.

Article 12.

L'Administration du pays d'origine avisera le Bureau inter-américain des annulations, cancellations, transferts et de tous autres changements dans la propriété ou l'usage de la marque.

Le Bureau interaméricain tiendra registre de ces changements, en avisera les Administrations des États contractants et les insérera immédiatement dans son bulletin.

La même procédure sera suivie lorsque le propriétaire de la marque demande une réduction dans la liste des produits auxquels la marque de fabrique s'applique.

L'addition subséquente d'un nouveau produit à la liste ne peut être obtenue qu'au moyen d'un nouvel enregistrement de la marque suivant les dispositions de l'Article 2 de ce Protocole. La même procédure sera suivie au cas de substitution d'un produit à un autre.

Article 13.

Les Etats contractants s'engagent à envoyer par l'intermédiaire de leurs bureaux respectifs des marques de fabrique, aussitôt qu'ils sont publiés, deux exemplaires des bulletins officiels ou publications dans lesquels sont insérées les décisions ou résolutions juridiques ou administratives, les

circulares o cualesquiera otras disposiciones emanadas de los poderes ejecutivo, legislativo o judicial que se refieran a la protección marcaria, la defensa de los nombres comerciales, o la represión de la competencia desleal y de las falsas indicaciones de procedencia, tanto en el orden administrativo, como en el civil o penal.

Artículo 14.

A fin de cumplir este Protocolo y facilitar el registro interamericano de marcas, los Estados Contratantes establecen por su agencia internacional, la oficina situada en la Habana, República de Cuba, que se denominará en lo sucesivo "Oficina Interamericana de Marcas," y confieren a su correspondencia oficial la franquicia postal.

Artículo 15.

La Oficina Interamericana de Marcas desempeñará las funciones expresadas en este Protocolo y en el Reglamento anexo, y se sostendrá con los derechos que perciba por la tramitación de las marcas, más las cuotas asignadas a los Estados Contratantes. Dichas cuotas se pagarán directamente a la Oficina por anualidades adelantadas, y se calcularán de la manera siguiente:

Se determinará la población de cada Estado Contratante que ratifique este Protocolo, por medio de los respectivos censos oficiales más recientes, dividiendo el número de habitantes en unidades que representen 100,000, considerando las fracciones mayores de 50,000 como una unidad y no tomando en cuenta las menores. El monto de dicha contribución

any other provisions emanating from the executive, legislative or judicial authorities may appear and which refer to the protection of trade marks, the protection of commercial names, the repression of unfair competition and of false indications of origin, whether of an administrative, civil or penal nature.

Article 14.

In order to comply with this Protocol, and to facilitate the inter-American registration of trade marks, the Contracting States establish as their international agency the Bureau located in Habana, Republic of Cuba, referred to as the "Inter-American Trade Mark Bureau," and confer upon its official correspondence the postal frank.

Article 15.

The Inter-American Trade Mark Bureau shall perform the duties specified in this Protocol and in the Regulations appended hereto, and shall be supported in part by the fees received for handling trade marks and in part by the quotas assigned to the Contracting States. These quotas shall be paid directly and in advance to the Bureau in yearly installments and shall be determined in the following manner:

The population of each Contracting State ratifying this Protocol shall be determined by its latest official census, the number of inhabitants to be divided into units of 100,000 each, fractions above 50,000 to be considered as a full unit, and those under to be disregarded. The annual budget shall be divided by the total number of units, thereby determining

ou quaesquer outras disposições emanadas das autoridades executivas, legislativas, ou judiciaes referentes á protecção das marcas de fabrica, protecção de nomes comerciaes e repressão da concurrencia desleal e de falsas indicações de origem, quer de natureza administrativa, civil ou penal.

Artigo 14.

Com o fim de conformar com este Protocollo, e facilitar o registro das marcas de fabrica inter-americanas, os Estados Contractantes estabelecem como sua agencia internacional a Secretaria existente em Havana, Republica de Cuba, a qual será conhecida como "Secretaria Inter-Americana de Marcas de Fabrica," e conferem á sua correspondencia oficial a franquia postal.

Artigo 15.

A Secretaria Inter-Americana de Marcas de Fabrica desempenhará os deveres especificados neste Protocollo e no regulamento annexo e será mantida em parte pelos emolumentos recebidos pelo serviço de encaminhar as marcas, em parte pelas quotas dos Estados Contractantes. Estas quotas serão pagas directamente e adeantadamente á Secretaria, em installações annuaes e serão determinadas da seguinte maneira:

A população de cada Estado Contractante que ratificar este protocollo será determinada por seu ultimo recenseamento official, devendo o numero de habitantes ser dividido em unidades de 100,000 cada uma, sendo tomadas como unidades as fracções acima de 50,000 e desprezadas as inferiores a este numero. O orçamento annual sera dividido pelo numero

lois, décrets et règlements, les circulaires ou toutes autres dispositions émanant des autorités législatives ou judiciaires et qui se réfèrent à la protection des marques de fabrique, à la protection du nom commercial, à la répression de la concurrence déloyale et des fausses indications d'origine, que ce soit de nature administrative, civile ou pénale.

Article 14.

À l'effet de se conformer au présent Protocole et de faciliter l'enregistrement interaméricain des marques de fabrique, les Etats contractants établissent comme agence internationale le Bureau situé à La Havane, République de Cuba, auquel il est réferé sous le nom de "Bureau Interaméricain des Marques de Fabricues," et confèrent à sa correspondance officielle la franchise postale.

Article 15.

Le Bureau Interaméricain des Marques de Fabrique exercera les fonctions spécifiées dans ce Protocole et dans les règlements qui y sont annexés, et ses frais seront supportés en partie au moyen des droits perçus pour les soins accordés aux des marques de fabrique, et partie par des quote-parts assumées par les Etats contractants. Ces quote-parts seront payées directement et à l'avance au Bureau par versements annuels, et elles seront calculées de la manière suivante:

La population de chaque État contractant ayant ratifié le présent protocole sera déterminée par son recensement officiel le plus récent. Le chiffre des habitants sera divisé en unités de 100,000, les fractions au dessus de 50,000 étant considérées comme unité entière, et celles au dessous n'étant pas comptées. Le budget annuel sera divisé par le chiffre d'unités,

anual se dividirá entre el número total de unidades así obtenido, lo que determinará el importe de la cuota por unidad, y multiplicando ésta por el número de unidades asignado a cada Estado, se fijará su contribución para la Oficina Interamericana.

Al recibirse nuevas ratificaciones o adhesiones al presente Protocolo, se procederá con los nuevos Estados en la misma forma, determinando en cada caso su contribución, previa adición de las nuevas unidades y determinación de la cuota por unidad que así resulte.

Queda expresamente convenido que esta contribución anual se efectuará mientras los demás ingresos de la Oficina no sean suficientes para su sostenimiento; mientras esto ocurra, cada año se revisarán los censos de población haciendo los cambios que resulten necesarios de acuerdo con los datos oficiales suministrados por cada Estado Contratante y calculando nuevamente las cuotas, antes de fijar las contribuciones de dichos Estados. Una vez que la Oficina pueda sostenerse con sus propios ingresos, se distribuirá el remanente de las contribuciones entre los Estados en proporción a las cantidades de ellos percibidas.

A la terminación de cada año, la Oficina Interamericana hará una liquidación de los derechos y cuotas percibidas, y después de cubierto su presupuesto para el año venidero, y de mantener una reserva adecuada, devolverá el sobrante a los Estados Contratantes en proporción a las cuotas pagadas por éstos.

El presupuesto de dicha Oficina y la reserva que debe mantener, serán aprobados por el Ejecutivo

the quota per unit. The contribution of each State to the Inter-American Bureau shall be determined by multiplying the quota per unit by the number of units allotted to each State.

Upon receipt of new ratifications and adhesions to this Protocol, the same procedure shall be followed with respect to such States, the quota of each to be determined by adding these additional units and thus determining the quota per unit.

It is expressly agreed that this annual contribution will continue to be paid only so long as the other revenues of the Bureau are not sufficient to cover the expenses of its maintenance. So long as this situation exists, the latest census of population will be used each year and, on the basis of official data furnished by each Contracting State, the changes in population shall be made and the quotas determined anew before fixing the contributions to be paid by those States. Once the Bureau becomes self-supporting through its own receipts, the balance remaining from the quota shall be returned to the States in proportion to the amounts received from them.

At the end of each year the Inter-American Bureau shall prepare a statement of fees and contributions received and after making provision for its budgetary requirements for the following year and setting aside a reserve fund, shall return the balance to the Contracting States in proportion to the quotas paid by them.

The budget of the Bureau and the reserve fund to be maintained shall be submitted by the Di-

total de unidades, assim determinando a quota por unidade. A contribuição de cada Estado à Secretaria Internacional será determinada multiplicando-se a quota por unidade pelo numero de unidades assignado a cada Estado.

No caso de novas ratificações e adhesões a este Protocollo, seguir-se-á o mesmo processo no referente a tais Estados, devendo a quota de cada um ser determinada somando-se essas unidades adicionaes e assim determinando a quota por unidade.

Fica expressamente entendido que esta contribuição annual continuará a ser paga somente enquanto as outras receitas da Secretaria não forem suficientes para cobrir as despesas de sua manutenção. Enquanto existir esta situação será usado cada anno o ultimo recenseamento da população, e nesta base oficial serão fornecidos dados pelos Estados Contractantes, devendo ser feita as diferenças na população determinada, novamente as quotas antes de serem fixadas as contribuições a serem pagas por esses Estados. Uma vez que a Secretaria esteja nas condições de se manter mediante a sua propria receita, o saldo restante das quotas será devolvido a cada Estado na proporção das quantias delles recebidas.

No fim de cada anno a Secretaria Inter-Americana preparará uma exposição dos emolumentos e das contribuições recebidas e depois de providenciar para as exigencias orçamentarias do anno seguinte e separar um fundo de reserva, devolverá o saldo aos Estados Contractantes na proporção das quotas pagas pelos mesmos.

O orçamento da Secretaria e o fundo de reserva a ser mantido serão submettidos pelo Director

determinant ainsi le chiffre par unité. La contribution de chaque état au Bureau interaméricain sera obtenue en multipliant la quote-part par le nombre d'unités attribuées à chaque état.

Au reçu de nouvelles ratifications et adhésions à ce Protocole, la même procédure sera suivie à l'égard de ces états, la quote-part de chacun étant déterminée par l'addition des unité nouvelles en vue d'établir la quote-part par unité.

Il est expressément convenu que cette contribution annuelle continuera seulement à être payée tant que les autres revenus du Bureau ne seront pas suffisants pour couvrir les dépenses de son maintien. Tant que cette situation existera, le recensement le plus récent de la population sera utilisé chaque année et, sur la base des documents officiels fournis par chaque état contractant, les changements de la population seront notés et les quote-parts déterminées à nouveau avant de fixer les contributions à payer par ces états. Une fois que le Bureau pourra se suffire au moyen de ses propres recettes, la balance en solde des quotes-parts sera remboursée aux Etats en proportion des valeurs reçues de chacun d'eux.

À la fin de chaque année, le Bureau Interaméricain dressera un état des droits et contributions perçus, et après avoir pourvu aux exigences de son budget pour l'année suivante et constitué un fonds de réserve, il remboursera le solde aux Etats contractants en proportion des quote-parts payées par eux.

Le budget du Bureau et le fonds de réserve à maintenir seront soumis par le Directeur du

del Estado en que la misma radique, a propuesta del Director de la misma, quien dará cuenta anualmente a todos los Estados ratificantes para su conocimiento.

rector of the Bureau and approved by the Chief Executive of the State in which the Bureau is established. The Director of the Bureau shall also submit an annual report to all ratifying States, for their information.

Artículo 16.

En caso de que la Oficina cese de funcionar con carácter definitivo se procederá a su liquidación bajo la supervisión del Gobierno de Cuba, distribuyéndose el saldo que resulte entre los Estados Contratantes en la misma proporción en que contribuyeron a su sostenimiento. Los edificios y otras propiedades materiales de la Oficina pasarán a ser propiedad del Gobierno de Cuba en reconocimiento de los servicios prestados por esa República para llevar a la práctica este Protocolo; pero dicho Gobierno se compromete a dedicar esas propiedades a objetos de carácter esencialmente interamericano.

Los Estados Contratantes convienen en aceptar como definitiva toda disposición que se tome para la liquidación de la Oficina.

Article 16.

In case the Bureau should cease to exist, it shall be liquidated under the supervision of the Government of Cuba, the balance of the funds remaining to be distributed among the Contracting States in the same proportion as they contributed to its support. The buildings and other tangible property of the Bureau shall become the property of the Government of Cuba in recognition of the services of that Republic in giving effect to this Protocol; the Government of Cuba agreeing to dedicate such property to purposes essentially inter-American in character.

The Contracting States agree to accept as final any steps that may be taken for the liquidation of the Bureau.

Artículo 17.

Las estipulaciones contenidas en este Protocolo tendrán fuerza de ley en aquellos Estados en que los tratados internacionales tienen ese carácter tan pronto como son ratificados por sus órganos constitucionales.

Los Estados Contratantes en que el cumplimiento de los pactos internacionales esté subordinado a la promulgación de leyes concomitantes, al aceptar en principio este Protocolo, se obligan a solicitar de sus órganos legislativos la adopción en el más breve plazo posible de la legislación que sea necesaria para ponerla en vigor, de acuerdo con sus prescripciones constitucionales.

Article 17.

The provisions of this Protocol shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs.

The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Protocol, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

da Secretaria e aprovado pelo Chefe Executivo do Estado em que estiver estabelecida a Secretaria. O Director da Secretaria submeterá tambem um relatorio annual a todos os Estados rati-ficantes, para o seu conhecimento.

Artigo 16.

No caso da Secretaria deixar de existir, será liquidada debaixo da superintendencia do Governo de Cuba, devendo o saldo dos fundos ser distribuido entre os Estados Contractantes na mesma proporção em que contribuiram para a manutenção. O edificio e demais haveres materiaes da Secretaria ficarão sendo propriedade do Governo de Cuba em reconhecimento dos serviços prestados por essa Republica no effectivar este Protocollo; o Governo de Cuba se compromette a dedicar este edificio a fins de caracterencialmente Inter-Americanos.

Os Estados Contractantes concordam em aceitar como finaes quaisquer medidas que sejam tomadas para a liquidação da Secretaria.

Artigo 17.

As disposições deste Protocollo terão a força de lei naquelles Estados em que os tratados internacionaes tenham esse carácter, logo que forem ratificadas pelos seus orgãos constitucionaes.

Os Estados Contractantes nos paes o cumprimento dos acordos internacionaes dependerá da promulgação de leis constitutantes, ao aceitar em principio este Protocollo concordam em solicitar dos seus orgãos legislativos a promulgação da necessaria legislação dentro do mais breve prazo possivel e de acordo com as suas disposições constitucionaes.

Bureau au Chef du Pouvoir Exécutif de l'état dans lequel le bureau est établi et approuvés par lui. Le Directeur du Bureau présentera également un rapport annuel à tous les états ayant ratifié le présent protocole, pour leur information.

Article 16.

Dans le cas où le Bureau cesserait d'exister, il sera procédé à sa liquidation sous le contrôle du Gouvernement de Cuba et le reliquat des fonds distribué aux États contractants en proportion des paiements effectués par eux. Les immeubles et tous autres biens matériels du Bureau deviendront la propriété du Gouvernement de Cuba en reconnaissance des services rendus par cette République en assurant l'exécution de ce protocole. Le Gouvernement de Cuba s'engage à consacrer cette propriété à des fins d'un caractère essentiellement interaméricain.

Les États contractants conviennent d'accepter comme définitives toutes les mesures prises pour la liquidation du Bureau.

Article 17.

Les dispositions de ce Protocole auront force de loi dans les états où les traités internationaux ont ce caractère, aussitôt leur ratification par les organes constitutionnels.

Les États contractants dans lesquels l'entrée en vigueur des accords internationaux est subordonnée à la promulgation de lois spéciales, s'engagent par l'acceptation de principe de ce Protocole à requérir à leurs organes législatifs respectifs l'adoption de la législation nécessaire dans le plus bref délai possible conformément à leurs dispositions constitutionnelles.

Artículo 18.

Los Estados Contratantes convienen en que tan pronto como este Protocolo entre en vigor las Convenciones sobre marcas de fábrica de 1910 y 1923 quedarán automáticamente sin efecto alguno en cuanto se refieren a la organización y funcionamiento de la Oficina Interamericana; pero cualesquiera derechos que de acuerdo con sus estipulaciones se hayan adquirido o puedan adquirirse hasta la fecha en que entre en vigor este Protocolo, continuarán siendo válidos hasta que expiren.

Article 18.

The Contracting States agree that, as soon as this Protocol becomes effective, the Trade Mark Conventions of 1910 and 1923 shall automatically cease to have effect in so far as they relate to the organization of the Inter-American Bureau; but any rights which have been or which may be acquired in accordance with the provisions of said Convention, up to the time of the coming into effect of this Protocol, shall continue to be valid until their due expiration.

Artículo 19.

El presente Protocolo será ratificado por los Estados Contratantes después que hayan ratificado la "Convención General Interamericana para la Protección Marcaaria y Comercial," de acuerdo con sus procedimientos constitucionales.

El Protocolo original y los instrumentos de ratificación serán depositados en la Unión Panamericana, la que enviará copia certificada del primero y comunicará aviso del recibo de las ratificaciones a los Gobiernos de los Estados Contratantes, entrando el Protocolo en vigor entre dichos Estados en el orden en que vayan depositando sus ratificaciones.

Este Protocolo regirá indefinidamente, pero podrá ser denunciado mediante aviso anticipado de un año, transcurrido el cual cesará en sus efectos para el Estado denunciante, quedando subsistente para los demás Contratantes. La denuncia será dirigida a la Unión Panamericana que trasmitirá aviso de la misma a los Gobiernos de los demás Estados.

Article 19.

The present Protocol shall be ratified by the Contracting States, in accordance with their respective constitutional procedure, after they shall have ratified the "General Inter-American Convention for Trade Mark and Commercial Protection."

The original Protocol and the instruments of ratification shall be deposited with the Pan American Union, which shall transmit certified copies of the former and shall communicate notice of such ratifications to the Governments of the other signatory States and the Protocol shall become effective for the Contracting States in the order in which they deposit their ratifications.

This Protocol shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance, at the expiration of which it shall cease to be in force as regards the State denouncing the same, but shall remain in force as regards the other States. All denunciations shall be sent to the Pan American Union which will thereupon transmit notice thereof to the other States.

Artigo 18.

Os Estados Contractantes concordam em que logo que este Protocollo entrar em vigencia, as Convenções de Marcas de Fabrica de 1910 e 1923 cessarão automaticamente de vigorar no que diz respeito á organização da Secretaria Inter-Americana; mas quaisquer direitos que tenham sido ou que venham a ser adquiridos de acordo com as disposições das referidas Convenções, até o momento de entrar em vigor este Protocollo, continuaro a ser validas até a sua devida expiração.

Artigo 19.

O presente Protocollo será ratificado pelos Estados Contractantes de acordo com os seus respectivos processos constitucionais, depois de terem ratificado a "Convenção Geral Inter-Americana de Protecção de Marcas de Fabrica e Protecção Commercial."

O Protocollo original e os instrumentos de ratificação serão depositados na União Pan-Americana, que transmíttira copias certificadas do primeiro e comunicará a notificação das referidas ratificações aos Governos dos outros Estados signatários, e o Protocollo vigorará para os Estados Contractantes na ordem em que depositarem as suas ratificações.

Este Protocollo vigorará indefinidamente, mas poderá ser denunciado mediante notificação feita com um anno de antecedência, no fim do qual deixará de vigorar no que diz respeito ao Estado denunciante mas continuará a vigorar relativamente aos outros Estados. Toda a denúncia será enviada à União Pan-Americana que em seguida transmíttira notificação da mesma aos outros Estados.

Article 18.

Les États contractants conviennent qu'aussitôt l'entrée en vigueur de ce protocole, les Conventions des Marques de Fabrique de 1910 et 1923 cesseront automatiquement avoir effet, en tant qu'elles se réfèrent à l'organisation du Bureau Interaméricain, mais tous droits qui ont été, ou qui peuvent être, acquis conformément aux dispositions des dites Conventions jusqu'à la mise en vigueur de la présente Convention continueront à être valides jusqu'à leur expiration normale.

Article 19.

Le présent Protocole sera ratifié par les États contractants conformément à leur procédure constitutionnelle respective après qu'ils auront ratifié la "Convention Générale Interaméricaine pour la protection des Marques de Fabricue et du Nom Commercial."

Le protocole original et les instruments de ratification seront déposés à l'Union Panaméricaine, qui en transmettra des copies certifiées et donnera avis de ces ratifications aux Gouvernements des autres États signataires, le protocole entrant en vigueur pour les États contractants dans l'ordre dans lequel leurs ratifications sont déposées.

Le présent Protocole restera en vigueur indéfiniment, mais il pourra être dénoncé moyennant notification donnée une année d'avance, à l'expiration de laquelle il cessera d'être en force à l'égard de l'État qui l'aura dénoncé, mais il restera en vigueur à l'égard des autres états. Toutes les dénonciations seront adressées à l'Union Panaméricaine qui en donnera avis aussitôt aux autres Etats contractants.

Los Estados Americanos que no hayan suscrito este Protocolo podrán adherirse a él, enviando el instrumento oficial en que se consigne esta adhesión a la Unión Panamericana, la que lo notificará a los Gobiernos de los demás Estados Contratantes en la forma antes expresada.

ANEXO
REGLAMENTO

Artículo 1.

La solicitud para obtener protección bajo el Protocolo del cual este Anexo es parte integrante, deberá hacerse por el titular de la marca o por su representante legal a la administración del Estado en que dicha marca haya sido registrada o depositada originalmente, de acuerdo con las disposiciones vigentes en dicho Estado, acompañando un giro postal o bancario pagadero al Director de la Oficina Interamericana de Marcas, por la suma requerida en el Protocolo. Tanto la solicitud como el giro deberán ir acompañados de un electrotípico de 10 x 10 centímetros, que sea reproducción fiel de la marca tal como ésta ha quedado registrada en el Estado de registro original.

Artículo 2.

Una vez que la Oficina Nacional haya comprobado que el registro de la marca es legal y válido, deberá enviar a la Oficina Interamericana de Marcas, a la mayor brevedad posible:

- A. El giro;
- B. El electrotípico de la marca;
- C. Un certificado en duplicado con los siguientes detalles:
 - 1. Nombre y dirección del propietario de la marca;
 - 2. Fecha en que se hizo la solicitud de registro en el Estado del registro original;
 - 3. Fecha en que la marca fue registrada en dicho Estado;
 - 4. Número del orden de registro en dicho Estado.
 - 5. Fecha en que expira la protección de la marca en dicho Estado.
 - 6. Un facsímil de la marca tal como se usa.
 - 7. Una relación de los productos en que se utiliza;

The American States which have not signed this Protocol may adhere thereto by sending the respective official instrument to the Pan American Union which in turn, will thereupon notify the Governments of the remaining Contracting States in the manner previously indicated.

ANNEX
REGULATIONS.

Article 1.

The application to obtain protection under the Protocol of which the present Annex is a part shall be made by the owner of the mark or his legal representative to the administration of the State in which the mark has been originally registered or deposited in accordance with the provisions in force in that State, accompanied by a money order or draft payable to the Director of the Inter-American Trade Mark Bureau in the sum required by the Protocol. The application and money order shall be accompanied by an electrototype (10 x 10 centimeters) of the mark reproducing it as registered in the State of original registration.

Article 2.

The National Bureau of such State having ascertained that the registration of the mark is legal and valid shall send to the Inter-American Trade Mark Bureau, as soon as possible:

- A. The money order;
- B. The electrototype of the mark;
- C. A certificate in duplicate containing the following details:
 - 1. The name and address of the owner of the mark;
 - 2. The date of the application for registration in the State of original registration;
 - 3. The date of registration of the mark in such State;
 - 4. The order number of the registration in such State;
 - 5. The date of expiration of the protection of the mark in such State;
 - 6. A facsimile of the mark as used;
 - 7. A statement of the goods on which the mark is used;

Os Estados Americanos que não tenham assignado este Protocollo poderão aderir ao mesmo mediante envio do respectivo instrumento oficial à União Pan-Americana que, por sua vez, transmitirá a competente notificação aos Estados Contractantes na maneira previamente indicada.

ANNEXO.

REGULAMENTO.

Artigo 1.

O pedido de protecção de acordo com o Protocollo do qual faz parte este Anexo scrá feito pelo dono da marca, ou seu representante legal á administração do Estado no qual a marca foi originalmente registrada ou depositada de acordo com as disposições em vigor nesse Estado, acompanhado do vale postal ou letra pagaval ao Director da Secretaria Inter-Americana de Marcas de Fabrica na importancia exigida por este Protocollo. O pedido e o vale serão acompanhados de um electrotypo (10 x 10 centimetros) da marca, reproduzindo-a tal como se achar registrada no Estado de domicilio do dono,

Artigo 2.

A Secretaria Nacional do dito Estado, depois de ter verificado que a marca é legal e valida enviará á Secretaria Inter-Americana de Marcas de Fabrica com a possível brevidade:

- A. O vale postal;
- B. O electrotypo da marca;
- C. Um certificado em duplicata contendo os seguintes detalhes:
 1. O nome e endereço do dono da marca;
 2. A data do pedido de registro no Estado do registro original;
 3. A data do registro da marca no dito Estado;
 4. A ordem do numero do registro no dito Estado;
 5. A data de expiração da protecção da marca no dito Estado;
 6. Um fascimile da marca usada;
 7. Uma declaração das mercadorias nas quais se acha aplicada a marca;

Les États américains qui n'ont pas signé ce protocole peuvent y adhérer en adressant les instruments officiels à l'Union Pan-américaine, laquelle à son tour en avisera les Gouvernements des autres États contractants dans les formes précédemment indiquées.

ANNEXE.

RÈGLEMENTS.

Article 1.

La demande pour obtenir protection conformément au Protocole dont la présente Annexe est partie sera adressée par le propriétaire de la marque ou par son représentant légal, à l'Administration de l'Etat dans lequel la marque a été originaiement enregistrée et déposée conformément aux dispositions en vigueur dans cet état. Elle sera accompagnée d'un mandat ou d'une chèque payable au Directeur du Bureau Interaméricain des Marques de Fabrica pour la somme fixée par ce Protocole. La demande et le mandat seront accompagnés d'une reproduction électrotype (10 x 10 centimètres) de la marque, dans l'Etat du domicile du propriétaire, la montrant telle qu'elle a été enregistrée dans l'Etat où a eu lieu l'enregistrement original.

Article 2.

Le Bureau national de cet Etat s'étant assuré que l'enregistrement de la marque est légale et valide enverra le plus tôt possible au Bureau Interaméricain des Marques de Fabrica:

- A. Le mandat;
- B. La reproduction électrotype de la marque;
- C. Un certificat en double expédition contenant les détails suivants:
 1. Le nom et l'adresse du propriétaire de la marque;
 2. La date de la demande d'enregistrement dans l'Etat de l'enregistrement original;
 3. La date de l'enregistrement de la marque dans cet état;
 4. Le numéro d'ordre de l'enregistrement dans cet état;
 5. La date d'expiration de la protection de la marque dans cet état;
 6. Un fac-similé de la marque telle qu'il en est fait usage;
 7. Une liste des produits pour lesquels cette marque est utilisée;

8. Fecha en que se hizo la solicitud a la Oficina Nacional del Estado de registro original para obtener protección de acuerdo con la Convención y este Protocolo.

D. En el caso de que el solicitante desee reclamar un color como elemento distintivo de su marca, treinta copias de la marca impresas en papel, mostrando dicho color, así como una breve descripción de la misma.

Artículo 3.

Dentro de diez días contados desde el recibo del material requerido por el Artículo 2, la Oficina Interamericana de Marcas procederá a inscribir toda la información en sus libros y a notificar a la Oficina Nacional de dicho Estado el recibo de la solicitud y la fecha y número del registro interamericano.

Artículo 4.

Dentro de treinta días contados desde dicho recibo, se procederán a enviar copias detalladas del registro interamericano a las Oficinas Nacionales de los Estados que hayan ratificado el Protocolo.

Artículo 5.

La Oficina Interamericana de Marcas publicará periódicamente un boletín en el cual aparecerán los datos incluidos en el certificado a que se refiere el inciso C del Artículo 2 de este Reglamento y la información que fuere pertinente sobre el registro de dichas marcas en los distintos países.

La Oficina Interamericana de Marcas podrá, además, publicar en su boletín, o por separado, libros, documentos, informes, estudios y artículos relacionados con la protección de la propiedad industrial.

Artículo 6.

La aceptación, objeción o denegación de una marca por la Oficina Nacional de cualquiera de los Estados Contratantes deberá trasmitirse a la oficina del Estado de origen de la solicitud, con objeto de que lo comunique a quien pueda interesar dentro de los diez días siguientes a la fecha de su recibo por la Oficina Interamericana de Marcas.

Artículo 7.

Todo aviso de cambio de propiedad de una marca, comunicado por la oficina del país de origen a la Oficina Inter-

8. The date of the application to the National Bureau of the State of the original registration to obtain protection under the Convention and this Protocol.

D. When the applicant wishes to claim color as a distinctive element of his mark, thirty copies of the mark printed on paper, showing the color, and a brief description of the same.

Article 3.

Within ten days after receipt from such administration of the matter required by Article 2, the Inter-American Trade Mark Bureau shall enter all information in its books and inform the National Bureau of such State of the receipt of the application and of the number and date of the inter-American registration.

Article 4.

Within thirty days after such receipt, detailed copies of the inter-American registration shall be sent to the National Bureaus of those States which have ratified the Protocol.

Article 5.

The Inter-American Trade Mark Bureau shall publish a periodic bulletin wherein shall appear the data included in the certificate provided for by Section C of Article 2 of these Regulations and also all other information which may be appropriate concerning registration of such marks in the various States.

The Inter-American Trade Mark Bureau may also publish in its bulletin or separately, books, documents, information, studies, and articles concerning the protection of industrial property.

Article 6.

The acceptance, opposition, or refusal of a mark by the National Bureau of any one of the Contracting States shall be transmitted within ten days following the date of its receipt by the Inter-American Trade Mark Bureau to the administration of the State of origin of the application with a view to its communication to whom it may concern.

Article 7.

Changes in ownership of a mark communicated by the Bureau of the country of origin to the Inter-American

8. A data do pedido feito à Secretaria Nacional do Estado de registro original, para obtenção de proteção de acordo com a Convenção e este Protocolo.

D. Quando o solicitante requerer a de como elemento distintivo de sua marca, trinta cópias da marca impressa em papel, mostrando a cor, e uma breve descrição da mesma.

Artigo 3.

Dentro de dez dias depois de recebida da dita administração a matéria exigida pelo Artigo 2, a Secretaria Inter-Americana de Marcas de Fabrica comunicará toda a informação nos seus livros e informará à Secretaria Nacional dos ditos Estados do recebimento do pedido e do número e da data do registro Inter-American.

Artigo 4.

Dentro de 30 dias após o dito recebimento, enviar-se-ão cópias detalhadas do registro Inter-Americanos às Secretarias Nacionais dos Estados que tenham ratificado o Protocolo.

Artigo 5.

A Secretaria Inter-Americana de Marcas de Fabrica publicará um boletim periódico no qual aparecerão os dados abrangidos no certificado previsto no Secção C do Artigo 2 deste Regulamento e outrossim toda e qualquer informação que for apropriada relativamente ao registro de marcas nos Diversos Estados.

A Secretaria Inter-Americanas poderá também publicar no seu boletim ou separadamente livros, documentos, informações, estudos e artigos relativos à proteção da propriedade industrial.

Artigo 6.

A aceitação, impugnação ou denegação de uma marca pela Secretaria Nacional de qualquer dos países contratantes será transmitida dentro de dez dias a partir da data do seu recebimento pela Secretaria Inter-Americanas de Marcas de Fabrica à administração do Estado de origem do pedido no intuito de ser comunicada a quem interessar possa.

Artigo 7.

As mudanças na posse de uma marca comunicadas pela Secretaria do país de origem à Secretaria Inter-Americanas

8. La date de la demande adressée au Bureau national de l'état de l'enregistrement original, en vue d'obtenir la protection conformément à la Convention et à ce Protocole.

D. Lorsque le requérant désire revendiquer une certaine couleur comme élément distinctif de sa marque, trente exemplaires de la marque imprimée sur papier montrant cette couleur ainsi qu'une brève description de celle-ci.

Article 3.

Dans les dix jour qui suivent la réception de cette Administration des éléments requis à l'Article 2, le Bureau Interaméricain des Marques de Fabricque inscrira tous les renseignements sur ses registres et il informera le Bureau national de cet État de la réception de la demande, du numéro et de la date de l'enregistrement interaméricain.

Article 4.

Dans les trente jours qui suivent cette réception, des copies détaillées de l'enregistrement interaméricain seront envoyées aux Bureaux nationaux des États qui ont ratifié le Protocole.

Article 5.

Le Bureau Interaméricain des Marques de Fabricque publiera un bulletin périodique dans lequel figureront les données incluses dans le certificat auxquelles se réfère le paragraphe C de l'Art. 2 des présentes Règlements, et aussi toutes autres informations utiles concernant l'enregistrement de ces marques dans les divers états.

Le Bureau Interaméricain des Marques de Fabricue peut aussi publier dans son bulletin ou séparément des livres, documents, renseignements, études et articles concernant la protection de la propriété industrielle.

Article 6.

L'acceptation, l'opposition ou le refus d'une marque par le Bureau national de l'un quelconque de Etats contractants sera transmis dans les dix jours suivant la date de sa réception par le Bureau Interaméricain des Marques de Fabricque, à l'Administration de l'Etat d'origine de la demande en vue de sa communication à tout intéressé.

Article 7.

Les changements de propriété d'une marque transmis par le Bureau du pays d'origine au Bureau Interaméricain des

americana de Marcas, que vaya acompañado de los respectivos derechos deberá examinarse y anotarse en el registro, enviándose el correspondiente aviso a las Oficinas de los demás Estados Contratantes en que dichos cambios deban hacerse, acompañado de los derechos que les corresponda; todo dentro del plazo fijado respecto de la solicitud.

Artículo 8.

El Director de la Oficina Interamericana de Marcas será nombrado por el Poder Ejecutivo del Estado en que la misma esté sita, entre abogados de experiencia en la materia y de solvencia moral reconocida. El Director podrá a discreción nombrar o remover los funcionarios o empleados de su Oficina, notificándolo al Gobierno de Cuba; y adoptar y promulgar los reglamentos, circulares, y disposiciones que considere convenientes para la buena marcha de la Oficina y que no sean incompatibles con este Protocolo.

Artículo 9.

La Oficina Interamericana de Marcas podrá emprender cualquiera investigación sobre marcas que el Gobierno de cualquiera de los Estados Contratantes lo pueda encomendar, así como también estimular la investigación de los problemas, dificultades u obstáculos que puedan impedir el funcionamiento de la Convención General Interamericana de Protección Marcaaria y Comercial o de este Protocolo.

Artículo 10.

La Oficina Interamericana de Marcas coadyuvará con los Gobiernos de los Estados Contratantes en la preparación del material para conferencias internacionales de esta índole; suministrará a dichos Estados cualesquier indicaciones que considere de utilidad así como las opiniones que puedan pedírselas respecto a las modificaciones que deban introducirse en los pactos interamericanos o en las leyes relativas a las materias de que ella trata; y en general, facilitará el cumplimiento de los fines de este Protocolo.

Artículo 11.

La Oficina Interamericana de Marcas informará a los Gobiernos signatarios, cuando menos una vez al año, de los trabajos que haya efectuado o esté haciendo durante ese período.

Trade Mark Bureau and accompanied by the required fees shall be examined, entered in the register, and corresponding notice sent to the Bureaus of the other Contracting States in which the transfer is to take place, accompanied by the proper fees, all within the time herein fixed with respect to application.

Article 8.

The Director of the Inter-American Trade Mark Bureau shall be appointed by the Executive Power of the State in which the Bureau is located, from among lawyers of experience in the subject matter and of recognized moral standing. The Director, at his discretion, may appoint or remove the officials or employees of his Bureau, giving notice thereof to the Government of Cuba; adopt and promulgate such other rules, regulations and circulars as he may deem convenient for the proper functioning of the Bureau and which are not inconsistent with the Protocol.

Article 9.

The Inter-American Trade Mark Bureau may carry on any investigation on the subject of trade marks which the Government of any of the Contracting States may request, and encourage the investigation of all problems, difficulties or obstacles which may hinder the operation of the General Inter-American Convention for Trade Mark and Commercial Protection, or of the Protocol.

Article 10.

The Inter-American Trade Mark Bureau shall cooperate with the Governments of the Contracting States in the preparation of material for international conferences on this subject; submit to those States such suggestions as it may consider useful, and such opinions as may be requested as to the modifications which should be introduced in the inter-American pacts or in the laws concerning these subjects and in general facilitate the execution of the purposes of this Protocol.

Article 11.

The Inter-American Trade Mark Bureau shall inform the signatory Governments at least once a year as to the work which the Bureau has done or is doing.

Marcas de Fabrica e acompanhadas os emolumentos exigidos serão examinadas, passadas para o registro e será enviada a correspondente notícia às Secretarias dos outros Estados Contractantes nos quais terá de se efectuar transferencia, acompanhada da comprovação taxa, tudo dentro do tempo especificado relativamente a requerimentos.

Artigo 8.

O Director da Secretaria Inter-americana de Marcas de Fabrica será nomeado pelo Poder Executivo do Estado em que estiver estabelecida a Secretaria, entre advogados de merecimento na matéria e de reconhecida integridade moral. Compete ao Director nomear ou dispensar à sua disposição os funcionários ou empregados da sua Secretaria, do que notificará ao Governo de Cuba; adoptar e proclamar quaisquer outras regras, regulamentos e circulares que julgar convenientes para o devido funcionamento da Secretaria e que não forem incompatíveis com esta Convenção.

Artigo 9.

A Secretaria Inter-Americana de Marcas de Fabrica poderá promover qualquer investigação sobre o assunto das marcas de fabrica que o governo de qualquer dos Estados Contractantes solicitar, e animar a investigação de todos os problemas, dificuldades ou obstáculos que possam tolher a operação da Convenção Inter-Americana geral para a Protecção de Marcas de Fabrica e Protecção Commercial.

Artigo 10.

Compete à Secretaria Inter-Americana de Marcas de Fabrica cooperar com os governos dos Estados Contractantes na preparação de matéria para conferências internacionais sobre este assunto; submeter aos derridios Estados as sugestões que lhe afigurarem úteis, e os pareceres que lhe forem solicitados quanto às modificações que deverão ser introduzidas nos pactos inter-Americanos ou nas leis diferentes a estes assuntos, e em geral facilitar a execução dos fins deste protocollo.

Artigo 11.

Compete à Secretaria Inter-Americana de Marcas de Fabrica informar os governos signatários ao menos uma vez por anno quanto ao trabalho que a Secretaria tiver realizado ou se estiver efectuando.

Marcas de Fabriques et accompagnées des droits prévus seront examinées et enregistrées, et avis en sera envoyé aux Bureaux des autres états contractants dans lesquels le transfert doit avoir lieu en y joignant les droits correspondants; le tout dans le temps fixé respectivement à la demande.

Article 8.

Le Directeur du Bureau Inter-américain des Marques de Fabrica sera désigné par le Pouvoir Exécutif de l'Etat dans lequel le Bureau est situé, parmi les avocats expérimentés en la matière et d'une moralité reconnue. Le directeur peut nommer ou congédier, à sa discrétion, les fonctionnaires et employés de son Bureau, en donnant avis au gouvernement de Cuba; adopter et promulguer telles autres règles, réglements et circulaires qu'il peut juger convenables au bon fonctionnement du Bureau et qui ne sont pas incompatibles avec ce Protocole.

Article 9.

Le Bureau Internaméricain des Marques de Fabrica peut se livrer à toute investigation au sujet des marques de fabrique que le Gouvernement de l'un des Etats contractants peut demander, et encourager l'étude de tous problèmes, difficultés ou obstacles qui font obstacle à la mise en oeuvre de la Convention Générale Interaméricaine pour la Protection des Marques de Fabrica et du Nom Commercial, ou de ce Protocole.

Article 10.

Le Bureau Interaméricain des Marques de Fabrica coopérera avec les Gouvernements des Etats contractants dans la préparation de la matière des conférences internationales sur ce sujet; il soumettra aux dits états telles suggestions qu'il peut considérer utiles et telles opinions qui peuvent être requises quant aux modifications qui devraient être introduites dans les pactes inter-américains ou dans les lois concernant ces questions, en général faciliter la réalisation des fins de ce Protocole.

Article 11.

Le Bureau Interaméricain des Marques de Fabrica renseignera les Gouvernements signataires, au moins une fois par an, sur le travail en cours ou accompli par le Bureau.

Artículo 12.

La Oficina Interamericana de Marcas mantendrá en lo posible relaciones con otras oficinas de la misma índole, y con instituciones y organismos científicos e industriales, para el intercambio de publicaciones, informes y datos relacionados con el progreso del derecho con respecto a la protección marcaria, la defensa y protección de los nombres comerciales y la represión de la competencia desleal y de las falsas indicaciones de procedencia.

Artículo 13.

Este Reglamento podrá ser modificado en cualquier tiempo a solicitud de cualquiera de los Estados Contratantes o del Director de la Oficina, siempre que la modificación no infrinja la Convención General ni el Protocolo de que el Reglamento forma parte, y haya sido aprobada por el Consejo Directivo de la Unión Panamericana, después de circulada entre los Estados Contratantes por un período de seis meses antes de la aprobación por la Unión Panamericana.

En testimonio de lo cual los delegados arriba nombrados firman el presente Protocolo en español, inglés, portugués y francés, y estampan sus respectivos sellos.

Hecho en la ciudad de Washington a los veinte días del mes de febrero de mil novecientos
veintinueve.

Article 12.

The Inter-American Trade Marks Bureau shall maintain as far as possible relations with similar offices and scientific and industrial institutions and organizations for the exchange of publications, information, and data relative to the progress of the law in the subject of the protection of trade marks, defense and protection of commercial names and suppression of unfair competition and false indications of origin.

Article 13.

These Regulations may be modified at any time at the request of any of the Contracting States or the Director of the Bureau, provided that the modification does not violate the General Convention or the Protocol of which the Regulations form a part, and that the modification is approved by the Governing Board of the Pan American Union after having been circulated among the Contracting States for a period of six months before submission for approval of the Pan American Union.

In witness whereof the above-named delegates have signed the Protocol in English, Spanish, Portuguese and French, and thereon have affixed their respective seals.

Done in the City of Washington on the twentieth day of February in the year one thousand nine hundred and twenty-nine.

Artigo 19.

Compete à Secretaria Inter-Americana de Marcas de Fabrica, até onde se possível, manter relações com repartilhas de natureza semelhante e instituições e organizações científicas e industriais, com o fim de promover o intercâmbio de publicações, informações e dados relativamente ao progresso da lei sobre matérias de proteção de marcas de fabrica, fáceas e proteção de nomes commerciaes e supressão de concorrência desleal e falsas indicações de origem.

Artigo 13.

Este Regulamento poderá ser modificado em qualquer tempo a pedido de qualquer dos Estados Contractantes ou Director da Secretaria, com tanto que a modificação não viole a Convênio Geral ou o Protocollo do qual elle fa parte, e que a dita modificação seja aprovada pelo Conselho Director da União Pan-Americana, depois de ter avulso entre os Estados Contractantes durante um período de seis meses antes de ser submetido à aprovação da União Pan-Americana.

Em testemunho do que os delegados acima designados assignam este Protocollo em portuguez, inglez, hespanhol, e francez, e assinam appõem os seus respectivos sellos.

Dado na Cidade de Washington
aos vinte dias do mes de fevereiro do anno mil e novecentos e vinte e nove.

Article 19.

Le Bureau Interaméricain des Marques de Fabrique entretiendra autant que possible des relations avec les bureaux similaires et les institutions et organisations scientifiques et industrielles pour l'échange de publications, de renseignements et documents relatifs au progrès de la loi sur la protection des marques de fabrique, la défense et la protection du nom commercial, la suppression de la concurrence déloyale et les fausses indications d'origine.

Article 18.

Ces Règlements peuvent être modifiés à tout moment à la demande de l'un des Etats contractants ou du Directeur du Bureau, pourvu que la modification ne viole pas la Convention générale ou le Protocole dont les Règlements font partie, et que la modification soit approuvée par le Conseil d'Administration de l'Union Panaméricaine, après avoir été portée à la connaissance des Etats contractants six mois avant l'approbation de l'Union Panaméricaine.

En foi de quoi, les délégués surnommés ont signé le présent Protocole en français, en espagnol, en anglais et en portugais et y ont apposé leurs sceaux respectifs.

Fait en la ville de Washington,
le vingtîème jour du mois de
février de l'an mil neuf cent
vingt-neuf.

- [SEAL.] A. GONZÁLES PRADA
[SEAL.] EMMERIO CANO DE LA VEGA
[SEAL.] JUAN VICENTE RAMÍREZ
[SEAL.] GONZALO ZALDUMBIDE
[SEAL.] FRANCISCO DE MOYA
[SEAL.] R. J. ALPARO
[SEAL.] JUAN B. CHEVALIER
[SEAL.] P. R. RINCONES
[SEAL.] MANUEL CASTRO QUESADA
[SEAL.] F. E. PIZA
[SEAL.] GUSTAVO GUTIÉRREZ.
[SEAL.] A. L. BUFILE
[SEAL.] RAOUL LIAIRE
[SEAL.] PABLO GARCÍA DE LA PARRA
[SEAL.] CARLOS DELGADO DE CARVALHO
[SEAL.] F. SUÁSTEGUI
[SEAL.] VICENTE VITA
[SEAL.] CARLOS LEAGUIRRE V.
[SEAL.] FRANCIS WHITE
[SEAL.] THOMAS E. ROBERTSON
[SEAL.] EDWARD S. ROGERS

CONVENTION AND PROTOCOL OF THE PAN AMERICAN UNION
FOR THE PREVENTION OF WAR IN AMERICA

ARTICLE I

It is believed by the contracting parties that the maintenance of international law and order is of great importance for the preservation of peace and security in America. They therefore agree to establish a Pan American Union to promote friendly relations among the Americas and to maintain international law and order.

AND WHEREAS the said Convention and the said Protocol have been duly ratified on the part of the United States of America and the instrument of ratification by the United States of America was deposited with the Pan American Union on February 17, 1931;

AND WHEREAS the said Convention and Protocol have been ratified by the Government of Cuba, whose instrument of ratification thereof was deposited with the Pan American Union on April 2, 1930; and the said Convention has been ratified by the Government of Guatemala, whose instrument of ratification thereof was deposited with the Pan American Union on December 30, 1929;

NOW, THEREFORE, BE IT KNOWN THAT I, HERBERT HOOVER, President of the United States of America, have caused the said Convention and the said Protocol to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONZ at the city of Washington this twenty-seventh day of February in the year of our Lord one thousand nine hundred [SEAL] and thirty-one, and of the Independence of the United States of America the one hundred and fifty-fifth.

HERBERT HOOVER

By the President:

HENRY L STIMSON

Secretary of State.

EIGHTH RESOLUTION ADOPTED BY THE PAN AMERICAN TRADE
MARK CONFERENCE ON FEBRUARY 19, 1929

GLOSSARY

RESOLVED, That the following glossary be followed in the interpretation of terms contained in the General Inter-American Convention on Trade Mark and Commercial Protection, and in the Protocol on the Inter-American Registration of Trade Marks, approved by the Conference:

Nationals: persons; partnerships; firms; corporations; associations; syndicates, unions and all other natural and juridical persons entitled to the benefit of nationality of the contracting countries.

Persons: include not only natural persons but all juridical persons such as partnerships, firms, corporations, associations, syndicates and unions.

Marks or Trade marks: include manufacturing, industrial, commercial, agricultural marks, collective marks, and the marks of syndicates, unions and associations.

Collective marks: mean marks lawfully used by two or more owners.

Commercial names: include trade names, names of individuals, surnames, partnership firm and corporate names, and the names of syndicates, associations, unions and other entities recognized by the laws of the Contracting States, and which are used in manufacturing, industry, commerce and agriculture to identify or distinguish the user's trade, calling or purpose.

Ownership: as applied to trade marks means the right acquired by registration in countries where the right to a trade mark is so acquired, and the right acquired by adoption and use in countries where the right to a trade mark is so acquired.

Owner or Proprietor: means the natural or juridical person entitled to ownership as above defined.

Deposit: means the filing of a trade mark in any Contracting Country other than the country of original registration.

Interfering mark or Infringing mark: means a mark which so resembles one previously registered, deposited, or used by another person as to be likely, when applied to goods, to cause confusion or mistake or to deceive purchasers as to their commercial source or origin.

Country of origin: means the country of original registration of the mark and not the country of the citizenship or domicile of the registrant or depositor.

Injunction: means a judicial order or process, operating upon the person, requiring the party to whom it is directed to do or (usually) refrain from doing some designated thing.

\$: Wherever this sign is used it shall be understood to mean money which is legal currency in Cuba and which has a value equivalent to that of the dollar.

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 774

BACARDI CORPORATION OF AMERICA, PETITIONER

v.

RAFAEL SANCHO BONET, TREASURER, AND DESTILERIA
SERRALLES, INC.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIRST
CIRCUIT

NOTE SUBMITTED TO THE SECRETARY OF STATE ON
BEHALF OF THE CUBAN GOVERNMENT

The following note was delivered to the Honorable Cordell Hull, Secretary of State, and by letter of April 2, 1940, was transmitted by the Secretary of State to the Attorney General:

MARCH 25, 1940.

EXCELLENCY: The attention of my Government has been called to the case of *Bacardi Corporation of America v. Bonet*, now before the Supreme Court of the United States on petition for certiorari. That case presents the question of the validity of cer-

(1)

tain legislation of Puerto Rico in its application to the trade-marks and commercial names of Compañía Ron Bacardi, S. A. of Cuba, which had granted to Bacardi Corporation of America the right to use its trademarks and commercial names in Continental United States and Puerto Rico. It is claimed by the petition in that case that the statute in question violates the Inter-American Trade-Mark Convention and Protocol of February 20, 1929, in that the very circumstance of use in Cuba which brings the marks and names within the protection of the Treaty is made the occasion, in the Puerto Rican Legislation, for prohibiting their use in connection with rum manufactured in Puerto Rico.

It is generally believed among trade-mark proprietors in Cuba that this Puerto Rican legislation violates the terms as well as the spirit of the Treaty to which Cuba and numerous other American countries are signatories. A decision by the highest Court of the United States upon that question is of great importance to Cuban nationals engaged in business in the United States and Puerto Rico, as well as to the Government of Cuba in determining its own policies under the Treaty.

It is respectfully requested that the foregoing views of the Cuban Government be brought, if possible, to the attention of the Supreme Court of the United States in an appropriate manner for its consideration in the case which is now before it.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

For the Ambassador:

José T. Barón,
Minister-Counselor.

236 Minister-Counselor.
His Excellency Mr. CORDELL HULL,
Secretary of State, Washington.

Respectfully submitted,

FRANCIS BIDDLE,
Solicitor General.

APRIL 1940.

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SUPREME COURT OF THE UNITED STATES.

No. 21.—OCTOBER TERM, 1940.

Bacardi Corporation of America,
Petitioner,
vs.
Manuel I. Domenech, Treasurer, and
Destileria Serralles, Inc. } On Writ of Certiorari to the
United States Circuit Court
of Appeals for the First
Circuit.

[December 9, 1940.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

This case presents the question of the validity of legislation of Puerto Rico prohibiting the use of trade marks, brands, or trade names, on distilled spirits manufactured in Puerto Rico if the marks, brands, or names had previously been used anywhere outside Puerto Rico, unless they had been used on spirits manufactured in Puerto Rico on or before February 1, 1936, or in the case of trade marks they had been used exclusively in continental United States prior to that date.

Petitioner, Bacardi Corporation of America, brought this suit in the District Court of the United States for Puerto Rico against the Treasurer of Puerto Rico to have this legislation declared invalid and its enforcement enjoined. The complaint charged invalidity under the Fifth Amendment and the commerce clause of the Constitution of the United States, the Organic Act of Puerto Rico, the Federal Alcohol Administration Act, and the General Inter-American Trade-Mark Convention of 1929. The Destileria Serralles, Inc., a Puerto Rican corporation, was permitted to intervene as a defendant.

The District Court held the legislation invalid and issued a permanent injunction. The Circuit Court of Appeals reversed the decree and directed the dismissal of the complaint. 109 F. (2d) 67. In view of the importance of the questions, we granted certiorari. 309 U. S. 652.

The findings of the District Court, which were not disturbed by the rulings of the Circuit Court of Appeals, show the following:

Petitioner, Bacardi Corporation of America, is a Pennsylvania corporation authorized to manufacture distilled spirits. By agree-

2 *Bacardi Corporation of America vs. Domenech et al.*

ment, petitioner became entitled to manufacture and sell rum in Puerto Rico under the trade marks and labels of Compania Ron Bacardi, S. A., a Cuban corporation. For more than twenty years, save for the period during national prohibition, the Cuban corporation and its predecessors had sold rum in Puerto Rico and throughout the United States under trade marks which included the word "Bacardi", "Bacardi y Cia", the representation of a bat in a circular frame, and certain distinctive labels. These trade marks were duly registered in the United States Patent Office and in the Office of the Executive Secretary of Puerto Rico prior to the legislation here in question.

Bacardi rum has always been made according to definite secret processes, has been extensively advertised and enjoys an excellent reputation. Under petitioner's agreement with the Cuban corporation, all rum designated by the described trade marks and labels was to be manufactured under the supervision of representatives of the Cuban corporation and to be the same kind and quality as the rum that the latter manufactured and sold.

In March, 1936, petitioner arranged for the installation of a plant in Puerto Rico. Since March 31, 1936, petitioner has been duly licensed to do business in Puerto Rico under its laws relating to foreign corporations. Petitioner's basic permits from the Federal Alcohol Administration were amended so as to enable petitioner to operate in Puerto Rico and its labels were approved. Petitioner rented a building in Puerto Rico and spent large sums in installing its plant.

On May 15, 1936, the legislature of Puerto Rico passed Act No. 115 known as the "Alcoholic Beverage Law" which, after providing for permits, prohibited the holder of a permit from manufacturing any distilled spirits which were "locally or nationally known under a brand, trade name or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico", with a proviso excepting brands, trade names or trade-marks used on spirits "manufactured in Puerto Rico on February 1, 1936", and also "any new brand, trade name or trademark which may in the future be used in Puerto Rico".¹ This Act

¹ These provisions were as follows (*Laws of Puerto Rico, 1936*, pp. 610, 644, 646):

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or

was declared to be of an experimental nature. It was repealed by Act No. 6 of June 30, 1936, which contained a similar provision and added a prohibition against exports in bulk.² That Act was to be in force until September 30, 1937. It was, however, converted into permanent legislation by the provisions of Act No. 149 of May 15, 1937, known as the "Spirits and Alcoholic Beverages Act".³

Declaring it to be the policy of the legislature, "to protect the nascent liquor industry of Puerto Rico from all competition by foreign capital",⁴ the Act of 1937 provided in Sections 44 and 44(b) as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade mark, brand, trade name, commercial name, corporation name or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restrictions shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico".

² Laws of Puerto Rico, Third Special Session, 1936, p. 78.

³ Laws of Puerto Rico, 1937, p. 392.

⁴ This declaration is as follows:

"Section 1(b). *Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the nascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market".

4 *Bacardi Corporation of America vs. Domenech et al.*

"Section 44(b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer;"⁵

It is these sections which petitioner attacks.

Section 7 of the Act of 1937 amended the proviso of Section 44 so as to make its limitation applicable, in regard to trade marks only, to such "as shall have been used exclusively in the continental United States prior to February 1, 1936."⁶ Petitioner asserts that in the absence of this last provision, there would have been two distillers whose trade marks would be subject to the prohibition of Section 44, that is, petitioner and one other; and that Section 7 protected the other manufacturer, leaving petitioner, whose marks had been used in foreign countries and not exclusively in continental United States, the only concern affected by the prohibition. The District Court said that the Act had the appearance of being framed so as to exclude only the plaintiff and that it was difficult to conceive of "a more glaring discrimination". In this relation petitioner cites the critical reference in *McFarland v. American Sugar Refining Company*, 241 U. S. 79, 86, to a statute "which bristles with severities that touch the plaintiff alone". The Circuit Court of Appeals while recognizing the immediate bearing of the provision as thus challenged sustained it "as applying to all who might later engage in the business".

That construction, however, does not touch the essential character of the discrimination which the statute seeks to effect in the use of trade marks. The statute does not deal with the admission

⁵ There followed in Section 44(b), after the provision quoted in the text, a proviso relating to the liquidation of a stock of rum where a rectifier wishes to withdraw from business.

⁶ Section 7 is as follows: "In regard to trade marks, the provisions of the Proviso of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date".

of corporations, foreign to Puerto Rico, for the purpose of transacting business in the Island. Petitioner received its local license. Nor does the statute prohibit the manufacture of rum in Puerto Rico. That is allowed. Petitioner received permits from Puerto Rico for that manufacture as well as the basic permits from the Federal Alcohol Administration. The statutory restriction is not on doing business or manufacturing apart from the use of petitioner's trade marks and labels to designate its product. As to these trade marks and labels, the prohibition does not rest on lack of proper registration under the local law. Petitioner's trade marks have been duly registered in the United States and Puerto Rico. Nor does the prohibition of use proceed on the ground that the trade marks, as such, are invalid. The Cuban Corporation which licensed petitioner to manufacture and sell Bacardi products and to use Bacardi trade marks had for many years sold its rum in Puerto Rico, although the rum was not manufactured there. There is no question of deception or unfair methods of competition. Petitioner is prohibited from the use of its trade marks, although valid and duly registered and although the product to which they are applied is otherwise lawfully made and the subject of lawful sale, solely because the marks had previously been used outside Puerto Rico and had not been used on spirits manufactured in Puerto Rico, or exclusively in continental United States, prior to February 1, 1936.

The first question thus presented is whether this discriminatory enactment conflicts with the General Inter-American Convention for Trade Mark and Commercial Protection signed at Washington on February 20, 1929.⁷

This treaty was the culmination of the efforts of many years to secure the cooperation of the American States in uniform trade mark protection. As previous Conventions had not proved satisfactory,⁸ the Sixth International Conference of American States, held at Havana in 1928, recommended to the Governing Board of

⁷ The Convention was ratified by the United States on February 11, 1931, and proclaimed February 27, 1931. 46 Stat. 2907. It was ratified by Cuba in 1930. *Id.*, p. 2976. It has also been ratified by Columbia, Guatemala, Haiti, Honduras, Nicaragua, Panama and Peru. Bulletin, U. S. Trade-Mark Association, 1936, p. 174.

⁸ Ladas, "The International Protection of Trade Marks by the American Republics", pp. 11 *et seq.*; Derenberg, *Trade-Mark Protection and Unfair Trading*", pp. 779 *et seq.*

the Pan American Union the calling of a special conference "for the purpose of studying in its amplest scope the problem of the Inter-American protection of trade marks". Delegates from the respective States were appointed accordingly and from their proceedings the Convention of 1929 resulted. There were obvious difficulties to be surmounted. These inhered in the differences between the principles of trade mark protection in the Latin American countries, where the civil law is followed, and the common law principles obtaining in the United States. The Convention states that the Contracting States were "animated by the desire to reconcile the different juridical systems which prevail in the several American Republics" and resolved to negotiate the Convention "for the protection of trade marks, trade names, and for the repression of unfair competition and false indications of geographical origin".

By Chapter I, entitled "Equality of Citizens and Aliens as to Trade Mark and Commercial Protection", the respective Contracting States bind themselves to grant to the nationals of the other Contracting States the same rights and remedies which their laws extend to their own nationals.

By Chapter II, entitled "Trade Mark Protection", provision is made for registration or deposit of trade marks in the proper offices of the Contracting States. Article 3 then specifically provides:

"Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States".

The grounds upon which registration or deposit may be refused or canceled are then set forth, including those cases where the distinguishing elements of marks infringe rights already acquired by another person in the country where registration or deposit is claimed, or where they lack an appropriate distinctive character, or offend public morals, etc. (Art. 3). It is further provided that labels, industrial designs and slogans used to identify or to advertise goods shall receive the same protection accorded to trade marks in countries where they are considered as such, upon compliance with the requirements of the domestic trade mark law (Art. 5). The owner of a mark protected in one of the Contracting States is permitted to oppose registration or deposit of an interfering mark (Art. 7); and the owner of a mark refused registration because of an interfering mark has the right to apply for and obtain the can-

cellation of the interfering mark on meeting stated requirements. (Art. 8.)

There is another provision that "the use and exploitation of trade marks may be transferred separately for each country" and properly recorded. (Art. 11.)

Chapter III provides for the "Protection of Commercial Names", Chapter IV for the "Repression of Unfair Competition", and Chapter V for the "Repression of False Indications of Geographical Origin or Source". The remaining chapters relate to remedies and contain general provisions. Among the latter is one to the effect that the provisions of the Convention "shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs". An accompanying Protocol establishes an Inter-American Trade Mark Bureau where marks may be registered.

The text of the provisions above mentioned relating to the protection of trade marks is set forth in the margin.⁹

⁹ "Chapter I. Equality of Citizens and Aliens as to Trade Mark and Commercial Protection.

"Article 1. The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source".

"Chapter II. Trade Mark Protection.

"Article 2. The person who desires to obtain protection for his marks in a country other than his own, in which this Convention is in force, can obtain protection either by applying directly to the proper office of the State in which he desires to obtain protection, or through the Inter-American Trade Mark Bureau referred to in the Protocol on the Inter-American Registration of Trade Marks, if this Protocol has been accepted by his country and the country in which he seeks protection".

"Article 3. Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

"Registration or deposit may be refused or canceled of marks:

"1. The distinguishing elements of which infringe rights already acquired by another person in the country where registration or deposit is claimed.

"2. Which lack any distinctive character or consist exclusively of words, symbols, or signs which serve in trade to designate the class, kind, quality, quantity, use, value, place of origin of the products, time of production, or which are or have become at the time registration or deposit is sought, generic or usual terms in current language or in the commercial usage of the country where registration or deposit is sought, when the owner of the marks seeks to appropriate them as a distinguishing element of his mark.

"In determining the distinctive character of a mark, all the circumstances existing should be taken into account, particularly the duration of the use of

This treaty on ratification became a part of our law. No special legislation in the United States was necessary to make it effective. *Head Money Cases*, 112 U. S. 580, 598, 599; *Asakura v. Seattle*, 265 U. S. 332, 341. The treaty bound Puerto Rico and could not be overridden by the Puerto Rican legislature. *Asakura v. Seattle*, *supra*; *Nielsen v. Johnson*, 279 U. S. 47, 52; *United States v. Belmont*, 301 U. S. 324, 331. According to the accepted canon, we should construe the treaty liberally to give effect to the purpose which animates it. Even where a provision of a treaty fairly ad-

the mark and if in fact it has acquired in the country where deposit, registration or protection is sought, a significance distinctive of the applicant's goods.

"3. Which offend public morals or which may be contrary to public order.

"4. Which tend to expose persons, institutions, beliefs, national symbols or those of associations of public interest, to ridicule or contempt.

"5. Which contain representations of racial types or scenes typical or characteristic of any of the Contracting States, other than that of the origin of the mark.

"6. Which have as a principal distinguishing element, phrases, names or slogans which constitute the trade name or an essential or characteristic part thereof, belonging to some person engaged in any of the other Contracting States in the manufacture, trade or production of articles or merchandise of the same class as that to which the mark is applied". . . .

"Article 5. Labels, industrial designs, slogans, prints, catalogues or advertisements used to identify or to advertise goods, shall receive the same protection accorded to trade marks in countries where they are considered as such, upon complying with the requirements of the domestic trade mark law". . . .

"Article 7. Any owner of a mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

"Article 8. When the owner of a mark seeks the registration or deposit of the mark in a Contracting State other than that of origin of the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and those of either Paragraph (b) or (c) below:

"(a) That he enjoyed legal protection for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; and

"(b) that the claimant of the interfering mark, the cancellation of which is sought, had knowledge of the use, employment, registration or deposit in any

mits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred. *Jordan v. Tashiro*, 278 U. S. 123, 127; *Nielsen v. Johnson, supra*; *Factor v. Laubenheimer*, 290 U. S. 276, 293, 294.

Here, the clear purpose of the treaty is to protect the foreign trade marks which fall within the treaty's purview. The basic condition of that protection, as set forth in Article 3, is that the mark shall have been "duly registered or legally protected" in one of the Contracting States. This phrase shows the endeavor to reconcile the conflicting juridical principles of these States,—the words "or legally protected" being added to the words "duly registered" with the apparent intent to cover trade marks which were entitled under the common law to protection by reason of appropriation and use.¹⁰ If duly registered or legally protected in one of the Contracting States, the mark is to be admitted to registration or deposit and is to be legally protected in the other Contracting States. The condition of that protection in the other States is compliance "with the formal provisions" of the domestic law. This clearly indicates that formalities or procedural requisites are envisaged and that, when these have been met, it is the intent of the treaty to confer a substantive right to the protection of the foreign mark. The intent to give this right of protection if the mark is

of the Contracting States of the mark for the specific goods to which said interfering mark is applied, prior to adoption and use thereof or prior to the filing of the application or deposit of the mark which is sought to be cancelled; or

"(c) that the owner of the mark who seeks cancellation based on a prior right to the ownership and use of such mark, has traded or trades with or in the country in which cancellation is sought, and that goods designated by his mark have circulated and circulate in said country from a date prior to the filing of the application for registration or deposit for the mark, the cancellation which is claimed, or prior to the adoption and use of the same".

"Article 11. The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

"The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective."

¹⁰ Derenberg, *op. cit.*, p. 788.

entitled to registration under the treaty, is shown with abundant clarity by the provisions of the same article setting forth the grounds, relating to infringement of previously acquired rights or lack of distinctive character, etc., upon which registration may be refused or canceled in the country where protection is sought. Also by the provisions as to the right of the owner of a mark protected in one of the Contracting States to oppose registration in another State of an interfering mark (Art. 7); and by the provisions as to the right of the owner of a mark, having its origin in one State and seeking registration in another, to obtain cancellation or annulment of an interfering mark which stands in the way of the registration sought, upon proving priority of right as stated. (Art. 8.) Then there is the additional recognition of the right to transfer the ownership of a registered mark and also to transfer separately for each country the use and exploitation of trade marks when the transfer is executed in accordance with the law of the place where it is made and is duly recorded. It will be observed that the right of protection of the foreign marks, on compliance with the prescribed formalities, is accorded in each of the ratifying States irrespective of citizenship or domicile.¹¹ When the foreign mark is entitled by virtue of the treaty to registration in a ratifying State, and is duly registered there, the substantive right to its protection in that State attaches.

In this view, the contention that a ratifying State, on due registration of a foreign mark in accordance with the treaty, is not bound to protect the owner in the use of that mark provided it refuses that protection to its own nationals necessarily fails. Undoubtedly the Contracting States are bound respectively to give to the nationals of the other Contracting States the same rights and remedies that are extended to their own nationals. That is provided in Article 1. But that provision does not exhaust the rights given by the treaty. These rights under Article 3 extend to the legal protection of the foreign marks when duly registered. When protection is sought for such marks a ratifying State cannot escape the obligations of the treaty and deny protection by the simple device of embracing its own nationals in that denial. That would make a mockery of the treaty. It is its plain purpose to prevent a ratifying State from denying protection to the foreign mark because of its origin or

¹¹ See Bulletin, U. S. Trade Mark Association, 1931, p. 173; Derenberg, *op. cit.*, p. 788.

previous registration in a foreign country. It is said that the object of the treaty is to prevent piracy. That is true, but the argument does not meet the issue. Protection against piracy necessarily presupposes the right to use the marks thus protected.

We are here concerned with the construction of the treaty only as it involves the determination of the validity of the statutory discrimination against the foreign marks which have been duly registered in the United States and Puerto Rico. The Bacardi marks are of Cuban origin. We must assume upon this record that they were duly registered and were valid in Cuba. Both the United States and Cuba have ratified the treaty.¹² The right of the Cuban corporation which owned the marks to make a separate transfer to petitioner of the right to use and exploit them in Puerto Rico is recognized by the treaty. Despite this, Puerto Rico has attempted to deny the right to use these marks on rum manufactured in Puerto Rico for the sole reason that the marks had been used outside Puerto Rico and had not been used on spirits made there, or exclusively in continental United States, before the given date. That is, the very fact of origin in Cuba, which makes the treaty applicable, is asserted as a ground for denying the right to use the trade marks, duly registered, on a product otherwise lawfully manufactured in Puerto Rico.

That Puerto Rico makes its rule applicable to its own citizens who may possess such foreign marks cannot avail to purge the discrimination of its hostility to the treaty. The same reasoning, if admitted to sustain this particular discrimination, would justify as against the treaty a local statute denying the right to use in Puerto Rico any foreign trade mark in any circumstances.

The exigencies of local trade and manufacture which prompted the enactment of the statute cannot save it, as the United States in exercising its treaty making power dominates local policy.

We are not impressed by the argument that petitioner is estopped by acts of acquiescence to challenge the validity of the Puerto Rican legislation. It is said that petitioner, having accepted the privilege to engage in the local business, is bound by the prescribed conditions. The basis of the contention fails. It does not appear that

¹² The Solicitor General has submitted to the Court a communication by the Cuban Embassy in Washington to the Secretary of State of the United States relating to the interest of Cuban nationals and the Cuban Government in the question here presented.

petitioner applied for a permit under the Act of 1937 which is the subject of attack. Petitioner did apply, on March 31, 1936, for a permit to engage in the business of rectifying distilled spirits. At that time the legislation of Puerto Rico did not discriminate against petitioner's trade marks, and the legislation of May 15, 1936, was of a temporary character. Apart from that, it is not the right to manufacture, aside from the use of trade marks, that is in dispute here but the right to use petitioner's trade marks upon its product. Nothing has been shown to warrant a finding of estoppel to assert the invalidity of the discrimination thus attempted in violation of the treaty. *W. W. Cargill Co. v. Minnesota*, 180 U. S. 452, 468; *Hanover Insurance Co. v. Harding*, 272 U. S. 494, 507; *Power Manufacturing Co. v. Saunders*, 274 U. S. 490, 497; *Frost v. Corporation Commission*, 278 U. S. 515, 527, 528.

We conclude that, upon this ground of repugnance to the treaty, the decree of the District Court insofar as it enjoined the enforcement of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937, (including the amendment made by Section 7 of that Act) with respect to petitioner's trade marks, was right, and that the reversal in that relation by the Circuit Court of Appeals was erroneous.

We have no occasion to consider the other grounds of objection to Section 44 which have been urged under the Constitution and laws of the United States and the Organic Act of Puerto Rico.

A different situation is presented with respect to Section 44(b) of Act No. 149 of 1937, prohibiting bulk shipments of distilled spirits. This prohibition does not appear to offend any right conferred by the treaty and we think an adequate basis for it is found in the police power of Puerto Rico as applied to traffic in intoxicating liquors. We have recently said that "The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories". *Puerto Rico v. Shell Company*, 302 U. S. 253, 261, 262. See, also, *Puerto Rico v. Rubert Hermanos*, 309 U. S. 543, 547. As the grant of legislative power in respect of local matters was "as broad and comprehensive as language could make it" (*Puerto Rico v. Shell Company, supra*), we think the legislature of Puerto Rico in the exercise of its police power had full authority to deal with the manufacture of, and

traffic in, intoxicating liquors, so far as the Island was affected, in the absence of a treaty violation such as we have found in the prohibition of the use of valid trade marks upon liquors which were otherwise permitted to be manufactured and sold. The legislature of Puerto Rico could thus have absolutely interdicted the manufacture or sale (*Mugler v. Kansas*, 123 U. S. 623), the importation into the Island (*State Board of Equalization v. Youngs' Market Co.*, 299 U. S. 62; *Mahoney v. Joseph Triner Corporation*, 304 U. S. 401, 404) and the exportation from the Island. *Ziffrin v. Reeves*, 308 U. S. 132, 139. Having this power, the legislature of Puerto Rico could adopt measures reasonably appropriate to carry out its inhibitions. That broad power necessarily embraced the limited exercise which we find in Section 44(b) with respect to shipments in bulk. Nor do we find anything in the Federal Alcohol Administration Act which militates against that provision. The Circuit Court of Appeals did not err in its decision in this respect.

The decree of the Circuit Court of Appeals in relation to Section 44 is reversed and the decree of the District Court is modified so as to eliminate the injunction against the enforcement of Section 40¹³ and Section 44(b) of Act No. 149 of May 15, 1937, and as thus modified is affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

¹³ Section 40 was embraced in the decree of the District Court but is not the subject of attack in this Court.